UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

Adv. Case No. 23-01138-mg

- x

CELSIUS NETWORK LIMITED,

Plaintiff,

v.

STAKEHOUND SA,

Defendant.

- x

Adv. Case No. 23-01202-mg

- x

CELSIUS MINING LLC,

Plaintiff,

v.

MAWSON INFRASTRUCTURE GROUP INC. et al.,

Defendants.

- x

United States Bankruptcy Court
One Bowling Green
New York, NY 10004

December 21, 2023
10:06 AM

B E F O R E :
HON MARTIN GLENN
U.S. BANKRUPTCY JUDGE

ECRO: KAREN

HEARING re 22-10964-mg Celsius Network LLC Ch. 11 Hybrid Hearing RE: Joint Motion of the Debtors and the Committee for Entry of an Order (I) Approving the Implementation of the MiningCo Transaction and (II) Granting Related Relief. (Doc## 4050 to 4052, 4077, 4091, 4096 to 4101, 4115 to 4117)

HEARING re Adversary proceeding: 23-01138-mg Celsius Network Limited v. StakeHound SA Hybrid Hearing re: Motion to Approve Settlement Agreement with StakeHound S.A. and Related Transfers Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Section 363(B) of the Bankruptcy Code filed by Mitchell Hurley on behalf of Celsius Network Limited. (Doc. nos. 105, 106, 109 to 111)

HEARING re Adversary proceeding: 23-01202-mg Celsius Mining LLC v. Mawson Infrastructure Group Inc. et al Hybrid Hearing RE: Debtor's Motion for Entry of An Order (I) Authorizing the Debtors to Redact and File Under Seal Certain Portions of the Adversary Complaint Against Mawson Infrastructure Group Inc., Luna Squares LLC, and Cosmos Infrastructure LLC and (II) Granting Related Relief. (Doc## 2, 4)

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for Special Litigation Counsel for Celsius
One Bryant Park
New York, NY 10036

BY: MITCHELL HURLEY

LOCKE LORD LLP
Attorneys for StakeHound SA
Brookfield Place, 200 Vesey Street, 20th Floor
New York, NY 10281

BY: STEPHANIE WICKOUSKI

WHITE & CASE LLP
Attorneys for Official Committee Of Unsecured Creditors
1221 Avenue of the Americas
New York, NY 10020

BY: KEITH WOFFORD
AARON COLODNY

KING & SPALDING LLP
Attorneys for Fireblocks Ltd.
1180 Peachtree Street, NE, Suite 1600
Atlanta, GA 30309

BY: THADDEUS WILSON

KIRKLAND & ELLIS LLP
Attorneys for the Debtor
300 N LaSalle
Chicago, IL 60657

BY: CHRIS KOENIG
ROSS M. KWASTENIET

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for the U.S. Trustee
Alexander Hamilton Custom House
New York, NY 10004

BY: MARK BRUH

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for the U.S. Trustee
One Bowling Green
New York, NY 10004

BY: SHARA CLAIRE CORNELL

MCCARTER ENGLISH, LLP
Attorneys for the Ad Hoc Group of Borrowers
245 Park Avenue
New York, NY 10167

BY: LISA BONSALL
DAVID J. ADLER

VENABLE LLP
Attorneys for Ignat Tuganov
151 West 42nd Street
New York, New York 10036

BY: JEFFREY S. SABIN

SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, DC 20549

BY: THERESE SCHEUER
WILLIAM UPTEGROVE

OFFIT KURMAN, P.A.
Attorneys for Ad Hoc Group of Earn Account Holders
1954 Greenspring Drive, Suite 605
Timonium, MD 21093

BY: JOYCE A. KUHNS

ERVIN COHEN JESSUP LLP
Attorneys for Creditor Simon Dixon
9401 Wilshire Blvd, 12th Floor
Beverly Hills, CA 90212

BY: CHASE ALEKSANDER STONE

SIMON DIXON
JASON AMERSON
CATHY LAU
LUCAS HOLCOMB

IMMANUEL HERMAN
KULPREET S. KHANUJA
DANIEL FRISHBERG

ALSO PRESENT TELEPHONICALLY:
ARTUR ABREAU
YOHANNES AFEWORK
EMMANUEL IVAN ALBINO
ANDREW AMULIC
JASMINE ARMAND
GERT-JAN BARK
BRIAN BARNES
JASON D. BEAIRD
ROBERT BEAULAC
CHRIS BECIN
ANDREW BEHLMANN
ELIZABETH AL. BEITLER
JEFFREY BERNSTEIN
INGO BEUTLER
EDWARD G. BIRCH
JOEL BLOCK
DUSIN BOROFF
PAUL BREUDER
GRACE C. BRIER
NURALDEEN BRIFKANI

JOHAN BRONGE
JOHN F. CARVALHO
VITOR CUNHA
SANTOS CACERES
ROBERT A. CAMPAGNA
ANDREW CARTY
ROY CARVER
RICKIE CHANGE
ROBERT CHRISTIANSEN
PAOLO CIAMARONE
CHRISTINA CIANCARELLI
GEOFFREY CIRKEL
JOSHUA CLARK
CHRISTOPHER COCO
LAFAYETTE A. COOK
CARL J. COTE
CAMERON CREWS
OONA E. CRUSELL
DAVID J. DALHART
MARY DELGADO
CHRIS DESANTIS
THOMAS DIFIORE
TRISTAN DIAZ
SHARON M. DOW
SCOTT DUFFY

JOHN PETER DZARAN
JANELL ECKHARDT
SIMON ELIMELECH
BEN EADES
GABRIEL EISENBERGER
JAMES ENGEL
JASON A. ENGERMAN
MICHAEL S. ETKIN
DAVID AVERY FAHEY
CHRIS FERRARO
FLORENCE FLANNIGAN
DEBORAH FRANKEL
DANIEL FRISHBERG
REBECCA GALLAGHER
JASLEIGH GEARY
DARIUS GHEORGHE
BRADLEY GIARDIELLO
VINCENT GOETTEN
RAMON GONZALES
MICHAEL GRAUBERT
CAMERON GUTHRIE
IMMANUEL HERMANN
LUCAS HOLCOMB
JASON IOVINE
ROBERTO JACOBS

ALI JAMSHID FAR
STIG JELLESTAD
MIKE JOHNSON
ELIZABETH HELEN JONES
GREG KACZKOWSKI
DAVID KAHN
DAN KAPLAN
YARA KASS-GERGI
RAVI KAZA
MARTIN KEDZIOR
PHILLIP KHEZRI
DIMITRY KIRSANOV
LEA KLORANE
RIKI KOULY
DEBORAH KOVSKY-APAP
CHRISTOPHER LACKEY
JOSEPH LALIA
MARK D. LARRABEE
DAN LATONA
JEAN-PHILIPP LATREILLE
CATHY LAU
JOSEPH LEHRFELD
BRIAN S. LENNON
MARK S. LEONARD
NICOLE A. LEONARD

PIETRO V. LICARI
DANIEL B. LOMAX
JOSE LOPEZ
PATRICIA LOUREIRO
JASON LU
WHITNEY LUBIN
JESSE LUND
BECKY MADSEN
DAVE K. MALHOTRA
WILLIAM C. MANDERSON
KEVIN M. MANUS
STEPHAN MARKERT
JEREMY MARONPOT
CHASE MARSH
CAROL MAUNDER
T.J. MCCARRICK
KEITH MCCORMACK
JOHN MELLEIN
ERIK MENDELSON
TOM MERCURI
LAYLA MILLIGAN
LAYLA MILLIGAN
JASON A. NAGI
NANCY NGUYEN
KEITH NOYES

RICHARD E. OSWALD
SHANE C. OWENS
LAWRENCE CHIP PORTER
DONALD L. POYNTER
MILIN PATEL
JEFF PATTON
WILLIAN PAREIRA
BRETT PERRY
GREGORY F. PESCE
KHAI PHAM
RYAN PHAN
RICHARD R. PHILLIPS
MATTHEW PRUSAK
LALANA PUNDISTO
MARC PUNTUS
GABRIELLE CHRISTINE REARDON
RYAN REPH
MARK ROBINSON
SHAYA ROCHESTER
JONATHAN RODRIGUEZ
WAYNE P. ROTHENBERGER
ANDREW RUDOLPH
JOSEPH E. SARACHEK
MICHAEL M. SARKISSIAN
THERESE SCHEUER

DAVID SCHNEIDER
NOAH M. SCHOTTENSTEIN
SAM SCHREIBER
WILLIAM D. SCHROEDER
DAVID SENES
RAFFAELE SENESE
EZRA SERRUR
NIKOLAS SEVERSON
MATTHEW W. SILVERMAN
DON SMITH
LUKE SPANGLER
KATHERINE S. STADLER
COURTNEY BURKS STEADMAN
KEITH SUCKNO
NIK SURI
PHECH GUECH TAING
LUCY THOMSON
ANHMINH TRAN
DAVID TURETSKY
ELVIN TURNER
VICTOR UBIERNA DE LAS HERAS
EZRA VAZQUEZ-D'AMICO
VETON VEJSELI
CAROLINE WARREN
FELICITAS WEILENMANN

MARTIN WILLIAMS

CHRISTOHPER WILSON

CORDULA WOLTERS-BOTHE

TAK YEUNG

ANDREW YOON

KAILA ZAHARIS

TANZILA ZOMO

DAVID BARSE

JARNO BERG

JOEL BLOCK

KYLE BRAY

HARSH JIVANI

ROBERT KAUFMANN

RAKESH PATEL

HEIN VAN DER WIELEN

DEAN CHAPMAN

SCOTT DAVIDSON

SEAN ANDREW FEENER

NICHOLAS LOMBARDI

ELIZABETH SCOTT

KATHERINE STADLER

MICHAEL STANLEY

SOMA BISWAS

GRENVILLE DAY

DREW DUFFY

SCOTT FLAHERTY

UDAY GORREPATI

BARRY R. KEINER

DIETRICH KNAUTH

MIKE LEGGE

AMELIA POLLARD

TIMOTHY REILLY

ANUBHAV RICHARDS

PETER J. SPROFERA

VINCE SULLIVAN

MAUDE TIPTON

ZACHARY ZABIB

P R O C E E D I N G S

CLERK: All rise.

THE COURT: Please be seated. All right, we are here in Celsius, 22-10964. Who is going to proceed for the Debtor?

MR. HURLEY: Good morning, Your Honor. Mitch Hurley with Akin, special litigation counsel for Celsius.

Your Honor, we are here this morning on Celsius' motion for approval of a settlement agreement entered into by Celsius with StakeHound that would resolve Celsius' claims against StakeHound, which have been the subject of substantial litigation activities both here in the adversary proceeding and abroad, as Your Honor is aware.

The settlement agreement before Your Honor this morning represents a major achievement in the cases. We think it's fair to describe it as a true home run for Celsius and its creditors. We submit that it should be approved and implemented as soon as possible.

Your Honor, if the motion is granted and the settlement agreement approved, within days StakeHound will be required to transfer to Celsius virtually all of StakeHound's assets. That includes more than 27,000 ETH, more than 90,000 DOT tokens, and more than 47.9 million MATIC tokens, which together are worth more than $105 million at recent prices.

And again, if the settlement agreement is approved, all of that will be available less an amount for a loan that I will discuss in a moment for distribution to creditors literally in days.

And that's not all. The settlement agreement also provides Celsius with a substantial interest in StakeHound's claims against Fireblocks that are pending in Israel. In that action, StakeHound alleges that Fireblocks is liable for having lost passkeys to more than 38,000 ETH back in May of 2021. Most of that ETH originally was provided by Celsius and ultimately of course by Celsius' customers.

This aspect of the settlement agreement provides a path for Celsius' creditors to recover the enormous value that was lost back in 2021 when Fireblocks lost track of those passkeys and perhaps much more.

The settlement agreement is the product of hard-fought arm's length bargaining, including a multi-day mediation led by Judge Michael Wiles and enjoys the enthusiastic support of the UCC, whose representatives participated actively in the mediation and in the drafting thereafter of a detailed terms sheet. And following that, the drafting of the detailed settlement agreement that's before Your Honor today.

That the settlement agreement in fact represents a home run for Celsius is plain I think from a few things.

One is that not only do we have the UCC's support and support from other creditor groups that I think were filed yesterday evening, there isn't a single creditor who has risen to object to this settlement. And the only objector, Your Honor, is Fireblocks; the party that is the target of the litigation that may wind up bringing substantial additional assets back into the estates for distribution to creditors.

Another way to understand what a home run this settlement is, Your Honor, is to think about where we were in this case just a few months ago and where we would be today and perhaps for an extended period of time in the future if the settlement agreement is not approved.

Prior to entering into the compromise, StakeHound, as Your Honor is aware, contended that the coins at issue and that will be transferred to us if the settlement agreement is approved, belong exclusively to StakeHound and never have to be returned to Celsius. Those coins have been exclusively in the possession of StakeHound for nearly three years. And when Celsius demanded their return last Spring, StakeHound refused.

StakeHound is a Swiss company whose employees are all located in Europe. I think it's fair to assume that last Spring StakeHound believed that it and the assets at issue here were out of the reach of this court and of these

estates.

StakeHound at that time denied it was subject to this Court's personal jurisdiction. It refused to enter into a voluntary freezing agreement so we could be sure those coins wouldn't be dissipated. And rather than negotiate with Celsius, StakeHound filed an arbitration in Geneva against StakeHound based on arbitration clauses contained in certain of the parties' agreements. StakeHound refused to withdraw the arbitration even after Celsius invoked the automatic stay. And when Celsius commenced this adversary proceeding, StakeHound at first refused to accept service which could have required a many months-long process through the Hague Convention and potentially resulted in a period of time during which, again, the assets could have been dissipated.

So that's where things stood as recently as a few months ago. They had all the assets in their possession. They claim they're their own property. They had the ability to employ a host of procedural and substantive obstacles to slow and seek to prevent Celsius from preserving and recovering those assets.

Now, ultimately through motion practice with which Your Honor is all too familiar, we were able to obtain alternative service on StakeHound and avoid the three-to-six month Hague service process. We were able to obtain an

order from this Court determining that the StakeHound Swiss arbitration violated the automatic stay and obtained in effect a stay of the Swiss arbitration. We were able to obtain StakeHound's concession that in fact is subject to this Court's personal jurisdiction for purposes of the adversary proceeding. And finally of course we obtained a temporary restraining order, freezing all of Celsius' assets on a temporary basis.

But those successes were costly and very time-consuming. At every turn, as was its right, StakeHound resisted Celsius' efforts vigorously. Many hundreds of hours and substantial fees were required to get through the procedural motions and to the TRO and to where we were before the settlement was entered into. And that litigation looked like it was going to be only the beginning.

After granting the TRO, Your Honor set a hearing date for Celsius' preliminary injunction and for StakeHound's motion to compel arbitration. The parties have embarked on substantial discovery in connection with preparing for that hearing. Your Honor made clear that the Court's mind was not made up concerning the outcome of the parties' motions and that it could have resulted in some aspects of the case proceeding an arbitration in Switzerland, some proceeding here. It could have resulted in potentially another round of briefing being required on a

freezing injunction in Switzerland with again other claims proceeding in this jurisdiction.

So in short, despite Celsius' litigation successes to date, including obtaining the TRO, we still faced a potential multijurisdictional, cross-border litigation morass. So Celsius was relieved when, after Your Honor ordered the TRO, StakeHound asked the Court to send the parties to mediation. That mediation was led skillfully by Judge Wiles and included two long, in-person days with the judge and weeks of negotiations that followed to try to finalize first the terms sheet and then turn that terms sheet into the settlement agreement before Your Honor.

All of this, again, was with the active participation not only of Celsius and its special committee, but also the creditors' representative in the form of the UCC and its advisors. And it was that hard-fought arm's length process that led to the settlement agreement, the terms of which I've described already and are detailed in the agreement itself. As I've already said, I think those terms represent a massive win for creditors and readily satisfy the standard for approving the settlement.

Under Rule 9019, the Court must determine whether the settlement is fair and equitable, including by looking to the familiar Iridium factors. Each of those factors weighs overwhelmingly in favor of granting the motion we

submit.

First, the likelihood of complex and protracted litigation. As I just described, absent this settlement, complex, protracted, and expensive cross-border litigation would be virtually assured. That can be avoided.

Second, the difficulties, if any, encountered in the matter of collection. This was potentially a serious issue. The assets at issue are crypto assets, which are notoriously easy to move and difficult to trace once they've been moved, and executing on any judgment or award would have been complicated by the fact that StakeHound is located abroad.

Under the settlement agreement in contrast, StakeHound will transfer 100 percent of the assets at issue directly into Celsius' wallets and will do it within days.

Third, the paramount interests of the creditors, including the (indiscernible) creditors either do not object or affirmatively support the agreement. As I already noted, the UCC has registered its enthusiastic support of the settlement, which of course it helped to negotiate. And other groups have added their support as well. Again, with one exception that I will discuss in a moment, Fireblocks, not a single creditor opposes the settlement.

Fourth, the extent to which the settlement is the product of arm's length bargaining. Again, negotiated at

great length. All the parties are represented by sophisticated counsel. Mediation was led by Bankruptcy Judge Wiles. Again, all of the Iridium factors we submit clearly point in favor of granting the motion.

We'll talk briefly about Section 363. We also sought authorization under 363 of the Code for the transfers by Celsius that are contemplated by the settlement agreement. Primarily we are talking about the Celsius agreement to loan back to StakeHound around $10 million to fund the Fireblocks litigation, which that loan will only happen after StakeHound first transfers $105 million to Celsius.

The 363 request from our perspective, Your Honor, was belt and suspenders. We weren't really sure whether it was necessary, including because, again, the transfer is a fundamental component of the settlement agreement and because ownership of the property at issue has long been hotly contested. So at least from the perspective of StakeHound, the coins from which the loan is going to be made only become the undisputed property of Celsius if the settlement agreement is approved. So it's kind of a chicken and the egg thing there.

THE COURT: I don't want to really cut you off. I am intimately familiar with everything having to do with the StakeHound litigation. I've read all of the settlement

papers. If there are any last points you want to make, Mr. Hurley, go ahead and do it. But I'm on top of this one.

MR. HURLEY: Okay. Understood, Your Honor. Can I turn briefly to the Fireblocks objection?

THE COURT: Please. Go ahead.

MR. HURLEY: So, again, the only objection is from Fireblocks. That's right, the only party that has objected to the settlement agreement is the party that is the target of the litigation being funded.

THE COURT: Are you surprised?

MR. HURLEY: Yes, a shocker. It's not surprising that Fireblocks will do basically anything to try to stand in the way of the settlement agreement because it's a home run for everybody involved in this case except arguably Fireblocks. That includes filing a meritless objection to the motion to approve the settlement agreement.

So, first of all, Fireblocks doesn't grapple at all with the 9019 and 363 standards in a serious way and doesn't really contend that they aren't met. Instead, Fireblocks focuses primarily on arguments concerning notice and confidentiality redactions, which are not persuasive.

First regarding notice. Fireblocks argues about any citation that Celsius was somehow required to file its motion on the public -- sorry, on the main docket. You know, as an initial matter, Fireblocks --

THE COURT: Don't waste your time with that one.

MR. HURLEY: Okay. Understood, Your Honor. So let me turn to the redactions. Celsius, in presenting the motion, redacted only the aspects of the motion and settlement agreement that could reveal confidential information concerning litigation, financing, and strategy related to the Israel litigation against Fireblocks.

Celsius in its opening papers cited ample caselaw establishing that redactions of that kind are appropriate and authorized under 107 and 9018. In its objection, Fireblocks just ignores all those authorities. Makes no effort to distinguish them. That's because they can't be distinguished.

In fact, Your Honor, this situation illustrates exactly why material relating to litigation financing and strategy can be redacted under the right circumstances under Section 107 and 9019.

Fireblocks doesn't want access to this material for any legitimate purpose, Your Honor. And certainly not to protect other creditors, none of whom oppose the settlement agreement and who are represented ably by the Committee. Fireblocks wants that material expressly to gain an advantage in the Israel litigation that involves StakeHound and Celsius. Full stop. They want the information specifically to be able to prejudice Celsius'

interests in that litigation. As explained in our submission, they don't have that right and it shouldn't be permitted.

Your Honor, I know you have a busy day. There are a host of other arguments that we describe as kind of kitchen sink arguments.

THE COURT: Let me see. I'm going to give Fireblocks the chance to argue and then I'll give you a chance to respond if necessary.

MR. HURLEY: Thank you very much, Your Honor. Just in closing with respect to those arguments, we just want to urge the Court to reject those contentions as meritless, approve the settlement agreement today if possible so that nine-figure payment can move into Celsius' coffers promptly and we can start focusing on the Fireblocks action. Thank you.

THE COURT: Thank you, Mr. Hurley.

THE COURT: Ms. Wickouski, do you want to be heard?

MS. WICKOUSKI: Thank you.

THE COURT: You don't have to agree with everything that Mr. Hurley said.

MS. WICKOUSKI: Thank you, Your Honor. Well, since we are --

THE COURT: Just identify yourself as StakeHound's

counsel.

MS. WICKOUSKI: Okay. Thank you. Your Honor, for the record, Stephanie Wickouski from Locke Lord on behalf of StakeHound.

As the counterparty to the settlement, obviously it's not our motion, but we enter into the settlement enthusiastically and support it if the Court approves it.

The only thing I can add is that this settlement, which was very closely fought, very heavily negotiated, is the product of an effective mediation and a mediation led by another SDNY bankruptcy judge. And I think that is a testament to the power of the process. But it also, if I can say this, grants a level of imprimatur on the process, because the process is important. And I would have to observe that among the mediations that I have participated in, this one has stood out because we have the involvement and the active engagement of all levels of senior management on both sides. There were times that we had meetings and both CEOs were on the phone and engaged in direct communication as well as counsel, as well as at times the directors. And so I think that it reflects everyone's best efforts in indeed a product that I think we are all pleased to support.

THE COURT: Thank you very much, Ms. Wickouski.

On behalf of the Committee?

MR. WOFFORD: Your Honor, good morning. Keith Wofford of White & Case on behalf of the Official Committee. The Official Committee, as you've heard, enthusiastically supports the settlement and urges the Court to approve the motion. I won't regurgitate the comprehensive presentation of our colleague, Mr. Hurley. Look, it's supported by the Creditors' Committee, it's supported by (indiscernible) from them and other creditors. Not surprisingly, the only objector is Fireblocks, the Defendant. But Your Honor, I would like to note that to the extent that you entertain that objection, that's to the detriment of everyone else.

The $10 million at issue here wouldn't be here but for the settlement. And so for that reason and the other reasons stated by Mr. Hurley, again, the Committee urges approval of the settlement agreement and approval of the motion.

THE COURT: Thank you very much. Anybody else who wants to speak in favor? All right.

Fireblocks' counsel?

MR. WILSON: Good morning, Your Honor. Thad Wilson from King & Spalding on behalf of Fireblocks LTD, a creditor of certain of the debtors who has and continues to license certain software to the Debtors.

Before I get into the main arguments for Fireblocks' objection and the reasons why the Court should

require the Debtors to unseal the settlement agreement, I wanted to move the Court under Bankruptcy Rule 9015(c), which incorporates Federal Rule of Civil Procedure 50 and is applicable to contested matters like this for a directed judgment as a matter of law on the Debtor's motion, specifically Rule 50(a) of the Federal Rules of Civil Procedure provides that judgement as a matter of law is appropriate in favor of a party where the court does "not have a legally-sufficient evidentiary basis to find for the party on that issue."

The Debtors have moved under Section 363 of the Bankruptcy Code to use estate assets outside of the ordinary course. As the Second Circuit held 40 years ago in In re Lionel Corp., 722 F.2d 1063, "The rule we adopt requires that a judge determining that a Section 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application. Your Honor actually cited that decision recently in In re Roman Catholic Diocese of Rockville Centre at 647 B.R. 69. That's a 2022 decision. And Lionel requires actual evidence, not statements of counsel or prose in a motion.

Because of Lionel, this Court actually has guidelines that the parties are supposed to meet in order to obtain a sale order under Section 363(b). In essence, this is a sale and financing agreement, albeit one where the

Debtors are acquiring substantially all of the assets of StakeHound, as you heard this morning.

This is highly unusual. Debtors don't normally acquire companies while they are in bankruptcy. Usually it's the other way around. And even in the motion, there is minimal discussion of why an acquisition of StakeHound is appropriate or reasonable. There is no discussion of the risks associated with such an acquisition. There is no unredacted information for creditors to analyze regarding what liabilities will actually be paid and in what amounts. There is no discussion of paying the salaries of StakeHound employees. In fact, the ones who signed the agreement who, by the way, would have a conflict of interest, and even portions of the releases are redacted so creditors have no idea who is being released and for what. These are just but a few of the questions.

THE COURT: Did you file your motion? You said you started out by making a motion. Did you file a motion?

MR. WILSON: No --

THE COURT: There is a procedure for filing motions. You didn't file any of this.

MR. WILSON: No, you can actually make an oral motion under Rule 50.

THE COURT: Oh, okay. It's denied.

MR. WILSON: Okay. That's fine. And, Your Honor,

I would also say that --

THE COURT: Now get to the 9019.

MR. WILSON: Sure. Understood, Your Honor. The Debtors are also purporting to use $10 million of estate assets outside of the ordinary course with virtually no information provided to the creditors or the Court regarding the litigation, including its status and the defenses raised by Fireblocks in that litigation. That's woefully insufficient even on its own from a moving perspective.

For example, the Court may be curious because it has no idea to understand this or know this, that Fireblocks has asserted a limitation of liability defense based on its contractual agreements with StakeHound that would limit potential recoveries to approximately $30,000. That's not disclosed to the Court, it's not disclosed to anyone.

In other words, assume StakeHound prevails on its liability theory in the case, which for the record, Fireblocks unequivocally and vigorously disputes, the Debtors may spend $10 million of estate funds, but StakeHound may only receive $30,000.

THE COURT: And they only collected $105 million in assets as part of the 9019 settlement that would provide the $10 million loan to pursue the claims against Fireblocks, which your client is entitled to vigorously oppose.

MR. WILSON: Right. Your Honor, again --

THE COURT: Could you finish your argument, please?

MR. WILSON: Yes. Your Honor, there is a lot here. So while --

THE COURT: Not as much as you think.

MR. WILSON: Well, Your Honor, with respect to the Debtors, they say in the last line of their reply, for example, that while Celsius believes a large recovery against Fireblocks is likely, that is not the sole means by which the StakeHound funding amount can be repaid. That's their quote. For that proposition, they cite two provisions of the settlement agreement. Those are entirely redacted. Those are Section 9. Those are entirely redacted. No one knows what those provisions provide

But, Your Honor, importantly, the Court should unseal the heavily-redacted portions of the purported settlement agreement so that creditors, including Fireblocks and other parties-in-interest and the United States Trustee have an opportunity to review the entirety of the agreement.

I use settlement agreement in quotes because, like I said, this is really a sale and financing agreement that happens to contain releases. Again, some portions of which are redacted. This is way more than a standard settlement of litigation in a bankruptcy case where one party pays --

THE COURT: Something I missed. You referred to this being a 363 sale that I'm being asked to approve? Are they acquiring all of the equity interests of Fireblocks? I didn't see that.

MR. WILSON: They are acquiring substantially all of the assets, Your Honor, if StakeHound and they are assuming a number of liabilities.

THE COURT: Finish your argument, please.

MR. WILSON: Right, okay. So it is in essence a 27-page sale and financing agreement.

As we set forth in detail in our objection, there is no valid reason for the agreement to be redacted, particularly when portions of the agreement relate to the purchase of a business and starting the new business line outside of the Debtor's ordinary course of agreement. And the agreement must be unsealed.

As the Court recognized at the outset of this bankruptcy case, "There is a strong presumption and public policy in favor of public access to court records." The reason for this, Your Honor, is so creditors and parties-in-interest fairly have the opportunity to review the requested relief and object on the merits where warranted.

Because of the redactions, Fireblocks and other creditors simply cannot fairly or in an informed way make substantive objections to the agreement.

THE COURT: Is there some reason that Fireblocks is the only one who has objected to this?

MR. WILSON: Your Honor, we believe the settlement agreement needs to be unredacted. We have no idea. There are substantial portions --

THE COURT: All right, enough. I've heard enough.

MR. WILSON: Okay.

THE COURT: Have a seat.

MR. WILSON: Okay. Thank you, Your Honor.

THE COURT: Anybody else? Do you want to be heard in reply, Mr. Hurley, briefly?

MR. HURLEY: If Your Honor has any questions, I'm happy to answer them.

THE COURT: I don't.

MR. HURLEY: Okay, thanks.

THE COURT: All right. First, Mr. Wilson's motion on behalf of Fireblocks' oral motion, not part of the record, is denied. Untimely, improper, et cetera. This is a 9019 motion. The Court, as in all such situations, applies the non-exclusive factors set forth in the Second Circuit's Iridium decision. I've carefully considered each of the factors to the extent applicable under the circumstances. I have lived with this litigation from the start. I am intimately familiar with all of the issues that have arisen in this case.

The sealing motion is granted. The only party that wishes to unseal it is the defendant in the proceeding that StakeHound and Celsius are pursuing to recover from. Sealing is appropriate on the terms of a litigation funding agreement such as the one essentially what -- what this provides. Okay.

The settlement provides for the transfer to CNL on or before the effective date of substantially all of the ETH in the possession of StakeHound less a specific number of ETH that has properly been sealed and the additional ETH which it will use to obtain releases in litigation forbearance agreements from the non-insider CNL customers. And I won't go through all the terms. They are all I think -- I've obviously seen the redacted terms, but I think the unredacted terms are sufficient to give everyone fair notice of what this settlement is and an opportunity to take a position with respect to the settlement.

Obviously the litigation in Israel against Fireblocks seeks a very substantial recovery as a result of Fireblocks allegedly losing the keys that would enable StakeHound and ultimately Celsius to recover an enormous sum that has been lost by virtue of Fireblocks' activity.

In a recovery will be divided -- that is described in the settlement agreement, a hundred percent of the proceeds to CNL and (indiscernible) receives a hundred

percent of the litigation funding amount plus 20 percent interest due under (indiscernible) 70 percent to CNL and 30 percent to StakeHound. Total recovery equals a pivot point -- I won't go through it. The terms are sufficiently set forth in the unredacted papers.

I've considered all of the In re Iridium operating non-exclusive factors and they overwhelmingly support approval of the settlement. So the redaction motion is granted, the 9019 motion is granted. The oral motion that Mr. Wilson made from the podium for judgment is denied. This is a 9019 motion. Submit the order. It will be entered today. Thank you very much.

MR. HURLEY: Thank you, Your Honor.

CLERK: Judge?

THE COURT: Yes.

CLERK: (indiscernible).

THE COURT: I don't want to hear anything else. I've heard everything I need to hear.

CLERK: Okay, thank you.

MR. KELLY: This is a message from the creator. You must listen.

THE COURT: Cut him off, Deanna. Deanna, disconnect him.

CLERK: He is disconnected, Judge.

THE COURT: Thank you. We haven't had that happen

at one of the Zoom hearings yet.

MR. HURLEY: I've been waiting.

THE COURT: I've been waiting for it, too, BUT...

MR. HURLEY: With Your Honor's permission, the attorneys who are handling the StakeHound matter --

THE COURT: They are all excused.

MR. KWASTENIET: Good morning, Your Honor. For the record, Ross Kwasteniet from Kirkland & Ellis. The second item on our agenda today is the winddown motion.

We are here today, Your Honor, seeking approval to implement the plan through the orderly winddown mechanism contained in the plan itself.

Per controlling Second Circuit caselaw, we believe that the relief we are seeking is pursuant to implementing authority contained in the plan itself, specifically Article 4E, and that we are not modifying the plan.

We've also argued in the alternative, Your Honor, that to the extent the relief we are seeking constitutes a modification, that any such modification is not material and adverse to creditors. The Debtors and the Committee have submitted declarations that support two things, Your Honor. first, the business judgment underlying our proposed winddown procedures, and second, our position that any modification to the extent the Court determines that there has been a modification is not material and adverse to

creditors.

So with Your Honor's permission after discussing with the Committee, we think what makes sense in terms of an order of presentment would be to get into the evidence and then to reserve for argument after the evidentiary presentation.

THE COURT: I have not designated this hearing as an evidentiary hearing. I have reviewed all of the papers and it seems to me that to the extent that there are declarations, which I have reviewed, I view the evidence as uncontested with respect to obviously what the original plan that was confirmed was, what the terms were, what -- the changes that are being made. I used the term modification, but not --

MR. KWASTENIET: Understood.

THE COURT: The pivot away from the original plan to the winddown and the roles of the various players in it. So I'm not going to permit cross-examination. As a result of the changes that result from the judicial conference's guidelines on remote hearings, which this includes, I don't believe I can go forward with an evidentiary hearing that would require cross-examination of witnesses today. I know there's been correspondence that was dealt with. Is this an evidentiary -- I've never designated it as an evidentiary hearing. I asked whether the moving parties believed that

an evidentiary hearing was required, and the answer was no.

It may well be that the U.S. Trustee thinks an evidentiary hearing is required. If you want to come up, Ms. Cornell, and argue about that, now is the time to do it.

MR. KWASTENIET: Your Honor, if I may just on that point.

THE COURT: Go ahead, Mr. Kwasteniet.

MR. KWASTENIET: When we filed the motion, we did indicate in the notice that we intended to present evidence at the motion. And in response to Your Honor's questions at the status conference last week, I recall my response to be that in the first instance as a legal matter, we don't think the plan has been modified, and therefore we don't need evidence.

THE COURT: I know that's your position.

MR. KWASTENIET: To the extent that there is a -- thank you, Your Honor.

THE COURT: Thank you. Ms. Cornell, do you want to come up?

MS. CORNELL: Good morning, Your Honor. For the record, Shara Cornell with the Office of the United States Trustee.

In respect to Your Honor's question, the United States Trustee does believe an evidentiary hearing would be required --

THE COURT: When did you ask for it?

MS. CORNELL: When did I ask for it?

THE COURT: Yeah. When did you ask for it? I got something last night that I haven't read fully, we're going to have a chambers conference about because you appear to have violated the protective order that was in place in this case. We'll take it up in chambers first and then if necessary put something on the record. But did you do a filing that said the U.S. Trustee specifically requests that the hearing on the winddown plan be designated as an evidentiary hearing?

MS. CORNELL: No, Your Honor.

THE COURT: Okay. It's not. Go ahead. What's your argument? Why didn't you? If you thought that this had to be an evidentiary hearing, you were required to have filed something. You didn't. You filed something late last night where you included an unredacted deposition transcript that I'll hear you in chambers as to whether you violated the protective order that's in place in this case.

Where is it that you filed something saying that you requested this be an evidentiary hearing?

MS. CORNELL: Your Honor, we did not file anything with respect to that.

THE COURT: Okay.

MS. CORNELL: We were in communication with the

parties that submitted the --

THE COURT: I'm the one who counts.

MS. CORNELL: I understand, Your Honor. We were under the impression from those parties that they would be available for cross-examination at this hearing. And I apologize that we did not file something in advance of this hearing with respect to Your Honor's comments.

THE COURT: I am constrained by the judicial conference resolution as to how this hearing is conducted. If it was going to be an evidentiary hearing, the local rules say that the first hearing on a matter is not an evidentiary hearing unless it's specifically required to be.

At the last hearing in this case, the Debtor indicated they didn't believe it needed to be an evidentiary hearing. I went forward on that basis. And if you believed it had to be an evidentiary hearing, you were required to request it. Not standing at the podium at 10:40 a.m. when this hearing is being held.

MS. CORNELL: I understand, Your Honor. However, it is the Debtor's burden in this case. And they believed that they had presented enough evidence or that they did not believe that further evidence to be required. We were -- I think we were following their lead, Your Honor.

THE COURT: Now is the time for us to take a brief recess. I want the Debtor's counsel, one or two people from

the Debtors, one or two people from the Committee. Do you have any of your colleagues here?

MS. CORNELL: Mr. Masumoto is here with me today.

THE COURT: All right. Then I want to see the two of you in chambers as well. We're going to deal with whether you have violated the protective order in this case.

Just so the record is clear, a little while ago I instructed that ECF 4149 be removed from public access.

MS. CORNELL: Your Honor, I have confirmation that it has been removed from public access.

THE COURT: Yeah. I directed that be done a little while ago.

MS. CORNELL: Our office --

THE COURT: Let's go. In chambers.

MS. CORNELL: Okay, Your Honor.

THE COURT: In chambers. We are in recess briefly.

(Recess)

CLERK: All rise.

THE COURT: Please be seated. Just bear with me a second.

All right, let's proceed.

MR. KOENIG: Thank you, Your Honor. For the record, Chris Koenig, Kirkland & Ellis, for Celsius. We are going to proceed with legal argument on the motion. And

what I want to focus Your Honor on is the theme of the argument is plan implementation or plan modification. And we submit that this is plan implementation, not plan modification. As my partner, Mr. Kwasteniet explained of course, we'll make an argument in the alternative in case Your Honor does not agree that this is merely plan implementation.

But as discussed at length in our reply brief we filed two nights ago, under the caselaw in the Second Circuit, Johns Manville, the key fact for whether a plan has been modified is whether the plan contemplates the type of change that is being proposed.

In Johns Manville, the plan contemplated certain types of changes and the Court commented that even a seemingly significant change at first blush may not be a modification within the meaning of Section 1127. The Second Circuit called that a variation instead of a modification.

Instead, there the district court found and the Second Circuit agreed that "It is clear that when the plan was adopted, the parties were embarking into unknown territory and the operation of the Manville claims facility might require adjustments and changes as additional knowledge and experience were gained. I could not articulate anything more apt for our present scenario, and that's exactly what our plan provided for as well.

Our plan contemplated this process for the orderly winddown, that we would file a winddown motion that set forth the specific details of the winddown transaction with no re-solicitation required. Specifically, our plan included the potential toggle to the orderly winddown in Article 4, Section E of the plan. And that section provides a roadmap for what an orderly winddown would look like, but it does not provide the details of that transaction.

MR. KWASTENIET: Your Honor, if I may. There is inappropriate material being flashed on the screen. Somebody was in the bathroom a minute ago. There's now inappropriate text commentary. I don't know if there is an ability to limit that. But...

THE COURT: All right. Can we shut the screens off? Thank you.

MR. KOENIG: Thank you, Your Honor.

That section, Article 4, Section E, provides a roadmap for an orderly winddown transaction, but does not provide the details of that transaction. Instead, this section is a one-and-a-half page summary of the type of transaction that an orderly winddown would be, including that there would be a mining-only newco business and it describes the four main types of distributions to creditors under an orderly winddown, including distribution of liquid cryptocurrency, equity in that new mining company,

litigation proceeds, and proceeds of Celsius' illiquid assets.

But what the plan expressly contemplated was that the key details would be filled in through a winddown motion that would be filed and served on creditors on at least ten days' notice. The plan provides a toggle into an orderly winddown requires us filing this motion and giving creditors time to object. It does not require any sort of re-solicitation requirement. And that's the plan that was confirmed in this case.

And the plan provides that the key details of this orderly winddown transaction were expressly left open to be set forth in this winddown motion. The key details included the identity of the mining manager would operate the business. The terms of that mining manager's compensation, the identity of the plan administrator, and the budget and distributions for the winddown.

It's very notable that this section, Section 4E, is in the means for implementation section of the plan. That's exactly what we're doing here in this winddown motion. We are implementing the plan, we are not seeking to modify or amend the plan.

So the most significant complaint that we've read in the objections by the U.S. Trustee and the Ad Hoc Loan Group is that the mining company would be capitalized with

$225 million instead of the illustrative $50 million that was set forth in the disclosure statement. But this is simply an implementation detail, the capitalization of the mining company, that was expressly left open in the plan for the winddown motion.

As I have described, the section 4E provides an overview for what an orderly winddown will look like, but leaves the details to our motion. And that's exactly what we've done here.

THE COURT: $50 million versus $225 million is a lot of money by most people's account.

MR. KOENIG: I certainly agree, Your Honor.

THE COURT: So where specifically in the plan do you believe this has been left open?

MR. KOENIG: Yes. So I would point you to two places. First, the definition of the winddown budget describes that the winddown motion will include distributions and other costs of the winddown. That must include the capitalization of the new company. How could it not? Distributions must include whatever would be distributed from the estate to the new company. That's in that definition. And in Section 4E, it says that the winddown motion will include the winddown budget. So the winddown budget incorporates the capitalization amount I would argue and the winddown motion expressly leaves open

the fact that the winddown budget is going to be one of those details.

To be clear, there is nothing in the plan that provides that the mining co will be capitalized with $50 million. It says the plaintiff provides that $450 million will be used to seed NewCo, but the plaintiff is actually silent on the capitalization amount for the mining co. There is nothing to modify. It's implementing. There's nothing to modify.

If Mr. Adler and Ms. Cornell are correct that there is -- this is a modification, where is the modification? It's not as though it was set forth in the plan and they're saying I'm redlining it out with 50 and putting in 225.

So our argument is that this is implementation. I think the standard would be business judgement, because we can't do whatever we want. We have to demonstrate a good reason. We submitted declarations. I understand this is an evidentiary hearing. But those declarations were uncontested. People have the opportunity to depose our witnesses. They did not even seek to do so. And if you read the objections, they don't really object that this is a bad idea or a breach of business judgement; they just say this should have been disclosed.

THE COURT: Well, the question is -- it's

different.

MR. KOENIG: Right. It's different. But not that it's wrong or --

THE COURT: It would require a new disclosure statement and re-solicitation.

MR. KOENIG: Right. And we would argue this is exactly what the plan contemplated.

THE COURT: So how does the toggle affect the projected distributions?

MR. KOENIG: How does the toggle affect the projected distributions? So that's sort of more in the modification part of the camp, but I will turn my argument there.

So Mr. Campagna's declaration that we filed with the motion explains, and he has charts in his declaration that compare the projected recoveries under the orderly winddown in the disclosure statement to the projected recoveries today. And he even helpfully breaks out what part of that includes cryptocurrency prices and what part of it sort of holds it constant. And even if you hold the prices of liquid cryptocurrency constant, the MiningCo transaction results in a 67 percent total recovery for creditors when compared to 61.2 percent under the baseline and orderly winddown that was -- what was in the disclosure statement.

THE COURT: If you use the current prices, it goes up to (indiscernible).

MR. KOENIG: That's exactly right. I'm trying to do apples to apples so that we're not benefiting from a rise up in prices.

THE COURT: You gave it both ways.

MR. KOENIG: Correct, using today's prices --

THE COURT: You have it using May 31, '23 prices and we have it November 17th, 2023.

MR. KOENIG: Correct. We did an apples-to-apples as of May 31 and then we did it oranges-to-oranges as of November of this year along with the motion.

So again, to be clear, obviously we --

THE COURT: So for both -- when I say for both, for both dates, the information provided shows a greater recovery under the mining transaction than under what was originally described as the orderly winddown. So there's no negative effect is believed to result from the changes that have taken place.

MR. KOENIG: In fact, we believe that the recoveries are significantly higher. Again, setting aside the cryptocurrency prices, we have made significant strides in reducing fees that are paid to the mining manager and preserving an awful lot of value through having U.S. bitcoin in the suite of agreements that they entered into pursuant

to the plan supplement documents, including $100 million of coupons to buy new rigs from a leading manufacturer, cost caps on what U.S. bitcoin is going do to build out the Debtor's facilities, which we believe is really instrumental for this new mining company. And Your Honor has seen through these cases the risk of having a mining company have contractual obligations with third parties. Sometimes those third parties fall down. And in this industry, they fall down an awful lot. Core Scientific, Mawson, and others.

We believe that the Cedarvale site and building out our own infrastructure is going to be massively beneficial to creditors because we control our own -- we're going to be vertically integrated and we control our own means for production. We are not as reliant on third parties.

But bringing back to the point of even if this is a modification, it's certainly not material and adverse to creditors because the uncontroverted evidence suggests that the recoveries for creditors are significantly greater under our proposal.

Additionally, it's notable that Mr. Adler complains about 225. His clients voted for a NewCo that had up to $450 million of capitalization. Look, I understand that obviously that is a different transaction, but that NewCo would have been seeded with $450 million to do

whatever they wanted. And mining was the most important part of that business. So there should be no surprise. There should be no -- frankly, I think it's feigned surprise, Your Honor. Because this is exactly what was -- this is what was voted for. There's no change in the plan. But even if there is a modification in the plan, our evidence shows -- and nobody has seriously contended that the recoveries are worse. People are trying to get some holdup value here. We all sort of see it, at least the Debtors see it for what it is. And we would like to -- we believe it's reasonable and appropriate to approve the motion and get --

THE COURT: I don't think it's fair to say that the U.S. Trustee's objection is for holdout value.

MR. KOENIG: No, no, I apologize. I was referring to Mr. Adler. The U.S. Trustee obviously doesn't have -- I apologize for interrupting, Your Honor.

But the only other thing I would say here is my partner, Mr. Nash last year and during your trial made an actuarial argument about how few folks were objecting. And I think it's notable here that we only have -- I think it's three, one from the U.S. Trustee, one from the Ad Hoc Group, and one from Ms. Lau. And we had dozens of objections to confirmation. And I think there was an affidavit of service that was filed. We filed this motion on everybody that

received notice of the confirmation. I think it's 11,000 -- it's the longest affidavit of service I've ever seen. And so I would respectfully submit that the lack of objections, and in fact there are a number of creditors that filed statements in support.

Your Honor asked at the hearing on November 30th that you wanted to hear from creditors about what they wanted to do and what they believed and all of those sorts of things. And I think that the creditors that have filed things have spoken with a resounding voice, and the creditors that have not filed anything, the silence is also remarkable.

So unless Your Honor has any questions for me at the moment, I will cede the lectern. I'm happy to jump back up after we hear the objections. Thank you.

MS. BONSALL: Lisa Bonsall from McCarter & English.

THE COURT: Okay.

MS. BONSALL: I have pro hac pending, Your Honor. You haven't entered it yet.

THE COURT: Go ahead.

MS. BONSALL: Thank you. First of all, just to address the last comment that was made by counsel with respect to objections. There was an objection. We filed a declaration of Mr. Billinger, who is an Earn and a borrower,

and he objects. And I also understand that many parties were bound by a plan support of agreement and couldn't object, or at least felt they couldn't.

THE COURT: Really?

MS. BONSALL: That's what I understand, Your Honor.

THE COURT: Where do you understand that from? It has -- you know, once an email has come across --

MS. BONSALL: That's my -- that's what I understand from --

THE COURT: -- that aren't supposed to come to me come to me with various pro se creditors who object to everything that's ever happened in this case or any other case.

MS. BONSALL: It's a possibility, Your Honor.

THE COURT: So it isn't slowed anybody down. Show me something in the plan support agreement that prevented people from objecting to the change in the winddown plan that's occurred. Can you point to some specific language?

MS. BONSALL: I cannot, Your Honor. But I will say that --

THE COURT: Then don't argue that they couldn't.

MS. BONSALL: Then I apologize, Your Honor. The seventh-largest creditor in the estate objected.

THE COURT: Okay.

MS. BONSALL: And he's an Earn creditor as well as a borrower.

THE COURT: Go ahead.

MS. BONSALL: All right. So the motion that was filed as an implementation of the plan we believe actually is contrary to the plan and in several material ways violates provisions of the plan. So the plan says at -- and this is cited really by the Debtors and the Committee -- at Section 4(E)(1) that the orderly winddown toggle says that management compensation and its component concepts are eliminated along with the plan sponsor contribution. And the Debtors include a chart in their supplemental filing at Page 19. That doesn't actually show the entire chart that was in the plan and the provision that -- one of the provisions that it doesn't note is the provision that says that management compensation is eliminated along with the plan sponsor contribution.

The motion proposes a U.S. bitcoin management agreement with a $20 million management fee and a $20 million termination fee. Those seem to be the exact types of management compensation that was supposed to be eliminated under the toggle provisions of the plan.

And by the way, Section 4(E)(1), Your Honor, is the portion of the plan that deals with the toggle to a winddown.

THE COURT: I don't have it open in front of me. Can you read me that language in 4(E)(1)?

MS. BONSALL: Pardon?

THE COURT: Could you read me the language in 4(E)(1)?

MS. BONSALL: That I was just citing?

THE COURT: Yes.

MS. BONSALL: It's from the chart. And again, that chart is reproduced in part in the Debtor's motion or the Debtor's supplement.

So it's the chart showing the orderly winddown plan changes on the left. It says the concept that is in the NewCo plan, plan sponsor contribution. On the right, it says change, quote, concept eliminated, related concepts such as "management compensation" and its component concepts will similarly be eliminated.

THE COURT: What page are you --

MS. BONSALL: Forty-seven, Your Honor.

THE COURT: Okay.

MS. BONSALL: All right. So I read that as saying that the management compensation structure that was in the NewCo proposal or the NewCo plan provisions is eliminated when there is a toggle to the orderly winddown. And I think that the management agreement that the Debtors have not finalized but included yesterday in their submission and

which is described in the terms sheet attached to their motion with respect to its terms, first with respect to it, but also its terms, I think is the type of management compensation that the plan provides will be eliminated with the toggle. That same section of the plan, 4(E)(1), eliminates new common stock and replaces it with backup mining company common stock. And that's defined in the definitions section of backup mining company, defined as the public-traded mining business that will own mining assets in which creditors will receive 100 percent equity interest in the mining co.

The proposals that the Debtor is making, they have numerous provisions that we distribute right off the bat, and in the future the equity in the new mining co. And I think that's a violation of the description of Mining Co. in the definitions.

THE COURT: What's a violation of the description?

MS. BONSALL: So the proposed agreement attached to the supplement filed yesterday --

THE COURT: The bitcoin.

MS. BONSALL: Yes. And described in the terms sheet provide for various forms of equity to be transferred to U.S. bitcoin. So one is the $20 million termination fee which is convertible to equity. And there's nothing anywhere in the toggle provisions of the plan nor the

disclosure statement that would put anyone on notice of that.

The terms sheet also provides for a restricted stock purchase agreement which would allow U.S. bitcoin to purchase the equity that Fahrenheit would have been able to purchase. That seems to me to be a straight-out violation of the orderly winddown provisions in connection with Section --

THE COURT: Tell me specifically which orderly winddown provisions you think were violated.

MS. BONSALL: Yes. So NewCo is described as being eliminated, replaced in certain places with post-effective date debtors and plan administrator as further described herein and as applicable. Related concepts such as NewCo capitalization amount will similarly be eliminated.

That, plus what I read before with respect to the plan contribution agreement, it's pretty clear, at least to me, that that provision is saying that the terms of the NewCo transaction are no longer going to be effective and there's going to be a winddown that is described in the definitions in the plan as being a winddown, Your Honor, and not something that could incorporate the various benefits and equity rights that were in the Fahrenheit transaction. You don't agree with me I can tell, Your Honor.

THE COURT: No, I'm listening carefully.

MS. BONSALL: Okay. So the restricted stock purchase agreement, which I think is a flat violation of the requirement that the backup mining company be 100 percent owned by creditors is not even attached to anything so far. It is one of the agreements that the Debtor is asking the Court to approve without anybody ever seeing and one of several provisions that the Debtors are looking for approval from Your Honor subject to further documentation that is by their own terms supposed to take precedence over whatever is before Your Honor now.

So the $20 million termination fee, the restricted stock purchase agreement, the requirement that U.S. bitcoin buy $12,750,000 worth of MiningCo stock right up front and the incentive units that they propose to give to MiningCo and the warrants that they propose to give to MiningCo all violate the definition of Backup Mining Company that is set forth in the definitions section of the plan.

So Your Honor wanted specific provisions, and so I kind of got in the weeds. I guess I --

THE COURT: I'm not ruling from the bench. I've got to go back and I've got to look through --

MS. BONSALL: Right. But I guess, Your Honor -- we say this in our papers and I know Your Honor has obviously read and familiar with everything. But I do think it's appropriate, at least right now -- I have more to say

on the specific provisions, but I do think it's appropriate to step back and say that this plan seems to be primarily designed as a NewCo plan and it does provide obviously the toggle to the orderly winddown.

We don't disagree with that, Your Honor. What we disagree with is the idea of implementing an entirely new plan through things that were, according to the Committee and the Debtor, left within the discretion of the Debtor. These are material things. Now, the plan itself does not devote much attention to the orderly winddown. That is true. But that makes the very few things that it says very important. And, frankly, it makes the disclosure statement even more important.

And it really can't be that you have a toggle provision in a plan that's called an orderly winddown that sets out exactly what is supposed to happen in broad terms and a bunch of definitions which say that the plan administrator and the post-confirmation or post-effective date debtors are going to run the company and wind it down and then come forward and say but wait --

THE COURT: Well, there always was going to be a public company.

MS. BONSALL: There was always going to be a public company. Right? There was.

THE COURT: When you say -- it's not like it's

going to be liquidated and money is going to go out the door in the next six months.

MS. BONSALL: This makes it look like there's a public company in order to maximize the benefits of an orderly winddown liquidation.

And, Your Honor, there is no disclosure in this -- so my point was twofold.

THE COURT: It was not -- would you agree it was not a liquidation -- the winddown was not a liquidation plan. It contemplated a going business, the MiningCo was going to be a going business, the equity of which was going to be distributed to creditors.

So it's not -- you know, what I -- I must say

MS. BONSALL: Your Honor, there are no --

THE COURT: Stop.

MS. BONSALL: Sorry. I apologize.

THE COURT: But I certainly before this case would have thought a winddown would be a liquidation. That's not what this was. It never was. Do you agree with that?

MS. BONSALL: I...

THE COURT: Yes? You don't? Tell me. If you don't, tell me.

MS. BONSALL: I don't.

THE COURT: Okay. Why not?

MS. BONSALL: I think it was -- look, I'm an

outsider. I'm an outsider. I came to this case a few weeks ago. I started with the disclosure statement. I went to the plan. I don't agree with that because it's framed as an orderly winddown through a public company. So...

THE COURT: The public company wasn't going to go out of business in six months, it was going -- it was always contemplated to be an active bitcoin mining company. It foundered with the SEC because of the inclusion of the staking business for which there were no audited financial statement. The MiningCo had financial statements. Yes or no? You're shaking your head no to everything I'm saying.

MS. BONSALL: I'm sorry. It is not clear from an outsider's perspective reading this that this was authorizing in any way a restructuring of a mining company business for investment purposes.

THE COURT: I could swear that during my lengthy confirmation hearing, I heard multiple times that that's exactly what was happening. Have you gone back and read the transcript from the whole confirmation hearing?

MS. BONSALL: Yes. I --

THE COURT: And you didn't find anywhere in there where there was a discussion that -- why would you establish a -- why would you register with the SEC a mining company that's going to go out of business? You know it wasn't going to go out of business in six months or a year.

Correct? All you do is shake your head. Yes or no?

MS. BONSALL: I'm -- I read it differently, Your Honor.

THE COURT: No. Answer my question.

MS. BONSALL: Say it again?

THE COURT: Then listen to my question.

MS. BONSALL: I'm sorry. I'm sorry. Go ahead.

THE COURT: Okay. You shake your head no to everything.

MS. BONSALL: Because I have a different understanding from reading this.

THE COURT: Then answer my questions. MiningCo was going to be a publicly-traded company in the business of mining bitcoin. Originally it was contemplated also to have this staking business, and it couldn't do that. But the concept was always to have a going-concern mining business with its equity distributed to creditors. Yes or no?

MS. BONSALL: Yes.

THE COURT: You could have said that a long time ago.

MS. BONSALL: I could have, except I don't view it as a mining co for investment purposes. There is no disclosure in the disclosure statement --

THE COURT: And the shares would be publicly traded so that if creditors who receive the shares decided

they didn't want to be in for the long haul with MiningCo, they could sell the stock.

MS. BONSALL: Yes. That I -- we agree, Your Honor.

THE COURT: And MiningCo would continue on. It was not -- in the sense that I always thought of a winddown is, you know, it's going to take six months or a year --

MS. BONSALL: Five years. It says five years.

THE COURT: To dispose of all the illiquid crypto. Not to deal -- not to go out of business as a mining company.

MS. BONSALL: Your Honor, I keep shaking my head because I think --

THE COURT: Show me where it said -- show me where in the disclosure statement or the plan it is suggested that MiningCo was going out of business.

MS. BONSALL: Well, here's what it actually says in the disclosure statement.

If the plan is effectuated through the orderly winddown, the Debtors would be wound down in an orderly process.

THE COURT: They would. But MiningCo was separate.

MS. BONSALL: The orderly winddown, however, does not provide for the same opportunity to enjoy the upside in

the equity of NewCo and its development of regulatory-compliant operating business.

THE COURT: So let's take it one step at a time. Do you agree that it originally contemplated MiningCo was going to have the staking business as well, correct?

MS. BONSALL: NewCo was going to have the staking business.

THE COURT: Yes. NewCo was going to have the staking business, correct?

MS. BONSALL: Yes.

THE COURT: And the reason that couldn't happen is because the SEC wouldn't preclear registration because it didn't have -- the staking business didn't have audited financial statements, yes or no?

MS. BONSALL: Yes.

THE COURT: The mining portion of the business, it had audited financial statements, correct?

MS. BONSALL: As I understand it.

THE COURT: And it still -- the SEC still hasn't approved. I understand that. Those risks are still disclosed.

MS. BONSALL: And a $20 million penalty if they don't, which was never disclosed. And in fact, the Debtors and the Committee resisted --

THE COURT: Was MiningCo going out of business in

six months or a year or was it going to -- assuming that it's able to register as a public company, is there something that says, by the way, you'll own stock in a company that's going out of business in six months, nine months, a year? Is there? Yes or no?

MS. BONSALL: No.

THE COURT: Okay. Go ahead.

MS. BONSALL: And there's nothing that says that we reserve the right to take the crypto that would be available for distribution and invest it in a new company. The argument --

THE COURT: The $500 million of crypto that was going to get seeded into NewCo is going back in distribution to the creditors.

MS. BONSALL: This is not --

THE COURT: Yes or no?

MS. BONSALL: This is not --

THE COURT: Yes or no?

MS. BONSALL: No.

THE COURT: Why not? Show me where that --

MS. BONSALL: Your Honor, if I could just finish.

THE COURT: No, you can answer my questions and then I will let you argue.

MS. BONSALL: Okay.

THE COURT: You know, if you don't answer my

questions, you're going to sit down very soon.

MS. BONSALL: I'm sure Mr. Adler would be better. Go ahead. Your Honor, the comparison to NewCo does not appear to me to be appropriate because the issue is whether this is an orderly winddown, not whether this is a revised NewCo. It is actually presented as a revised NewCo transaction. And that is not what the creditors voted on. The creditors voted on a NewCo transaction under certain circumstances and there was to be a toggle to an orderly winddown with an ongoing, hopefully public mining company business in the event that they could not get clearance for NewCo.

THE COURT: And the mining business, was there anywhere it said it will exist only for one year, four years, five years?

MS. BONSALL: No.

THE COURT: It was contemplated to be a publicly-traded company with an ongoing business, correct?

MS. BONSALL: Yes.

THE COURT: Go ahead.

MS. BONSALL: It was not contemplated that there would be investment in the MiningCo business. At least that is not disclosed.

THE COURT: Really?

MS. BONSALL: Where does it say that?

THE COURT: What were they seeding NewCo with --

MS. BONSALL: $50 million. And now we're coming to -- aside from the disclosures in the -- or let me back up, Your Honor.

So what I was saying before is that the disclosures with respect to the orderly winddown were relatively thin in the disclosure statement and that the provisions of the plan that deal with the orderly winddown are much shorter than with respect to the NewCo transaction. And that makes whatever they say more important. The orderly winddown process is described briefly as a backup MiningCo business in the definitions which requires 100 percent to be owned by creditors. And in the toggle provision shows in brief terms what is going to happen. And it eliminates the Fahrenheit transaction and much of the baggage that went with it, including management compensation.

The fact that there was $50 million in capitalization suggests that it was not intended to be a major investment in a future company with crypto diverted from distribution to creditors in order to finance it.

THE COURT: Under Newco, how much in crypto was to be transferred to NewCo under the plan?

MS. BONSALL: There was as I recall $450 million of crypto, but there were distributions and options under

that scenario that --

THE COURT: Is more going to be distributed to creditors or less as a result of the toggle and the...

MS. BONSALL: Less. I mean, well, if you look at the chart that is in the Debtor's supplement, the crypto available for distribution before you start investing it and diverting it to MiningCo is higher in the original orderly winddown. And, Your Honor, you as well are comparing the restructuring that they are proposing to the Fahrenheit transaction. That's not what the toggle was. The toggle was to an orderly winddown transaction. So if the Debtors are going to promote this -- which I think is a new plan -- if they're going to promote this as part of the orderly winddown transaction, if they're going to call this an implementation, it should be compared to the orderly winddown provisions of the Code and the disclosure statement with respect to orderly winddown, not with respect to Fahrenheit.

And the one thing that is clear is that in a toggle, the Fahrenheit transaction is eliminated. The management compensation related to it is eliminated. Right? The stock is eliminated.

The only -- the other thing that is very clear in a toggle situation is that the creditors are supposed to own a hundred percent of the backup mining company. The

definitions are clear on that. And what they are proposing are compensation provisions to U.S. bitcoin that are comparable or similar to the Fahrenheit compensation. That's directly contrary to what it says.

But not only that, those compensation provisions are for equity. And so I disagree with Your Honor about the impression and what was happening here. But regardless, what is clear is that the plan said 100 percent equity to creditors and the proposal is giving away equity as if this were the Fahrenheit plan to U.S. Bitcoin.

And I guess, Your Honor, I got distracted by Your Honor's questions. But the Debtors don't actually tie into anywhere in their papers the definitions relating to winddown proceedings that are actually in the plan.

And counsel touched on it briefly. But if you actually go and read those -- first of all, you know, if you read the very few provisions in the plan itself with respect to the orderly winddown, it says, "In the event that the Debtors elect to toggle to the orderly winddown, the Debtor shall appoint a plan administrator on terms no worse than those contained in the Backup Plan Administrative Terms Sheet."

I mean, this provision says that they're not going to do anything that gives them some discretion with respect to terms no -- no worse than in the Backup Plan

Administrator Terms Sheet. There's nothing anywhere that gives them authority to enhance the capitalization of MiningCo. It's not express and they don't say that it is. And it's not implied in any fair interpretation of anything. What they say in their papers is that because it's silent, it was only -- makes sense, that's what they say, to incorporate it within their discretion in terms of the winddown procedures.

Now, the winddown procedures are defined in the plan at Number 271, Your Honor, in the definitions section as the mechanics and procedures to effectuate a winddown.

That doesn't incorporate increasing capital three-and-a-half times. Mechanics and procedures do not authorize the Debtor to do an entirely new structure and pay a lot more people in equity and in money. That's not mechanics and procedures. You can't shoehorn that, what they're trying to do, into the definition in the actual plan itself, which is nowhere in their papers.

Not only that, they talk about the budget as if they're allowed to do whatever they want with the budget. And in fact, the way they argue that they should be entitled to triple the capital requirements is through the winddown budget. But the winddown budget is actually a defined term in the plan at 268. And it says winddown budget is defined as the fees and expenses for -- and disbursements -- I think

they hang their hat on disbursements -- required for an orderly winddown. There is no argument that can be made that transferring that capital, another $175 million worth of crypto, is "required" for an orderly winddown.

269 defines winddown expenses as the actual and necessary costs and expenses incurred by the plan administrator under the agreement and winddown procedures. Everything is cabined within those definitions, Your Honor. And so one of the reasons I had not answered your questions directly with respect to the intent of the future of the MiningCo transaction is because everything that's actually in the plan suggests that this is going to be a public company for the benefit of creditors but not a vehicle that would -- that was devoted to some sort of an investment opportunity. They justify this plan. They justify taking away $175 million worth of crypto by the upside in a speculative venture. There are no disclosures in the disclosure statement with respect to the risks of MiningCo.

Now, I'm sure they argue -- they do argue. The only two sections that they cite in the disclosure statement in support of their argument that they made disclosures with respect to the risk of Mining Company are with respect to NewCo and the NewCo transaction.

If you go to the disclosure statement, Your Honor, and you look down the table of contents and you look at the

risks, they all relate to NewCo. There is nothing in there about mining Co. They say -- I'm sure they would say -- they don't say it in their papers. They're not clear in their papers. When they stand up and respond, I'm sure they'll say a disclosure with respect to Fahrenheit is a disclosure with respect to MiningCo. I don't think that that's fair.

Your Honor is saying their argument that they get to do a whole new MiningCo company that is -- and we're not even getting to Cedarvale and what happened there. We're not even getting to what we found out last night, which I understand may not have been proper in Your Honor's view.

THE COURT: Then don't argue it.

MS. BONSALL: Okay. All right. I will argue what I had planned to argue before what I read what I read last night.

THE COURT: Be careful of what you say.

MS. BONSALL: Absolutely, Your Honor. The testimony at trial was as of a $50 million capitalization for Mining Company. The argument in their papers is that this settlement that acquired the Cedarvale site is a reason why they need another $80 million of capital for this MiningCo. That was not disclosed anywhere.

So independent of what I read last night, when I finally worked my way through the trial transcripts and the

motion to approve the settlement agreement, when I finally, as an outsider not seeing anything in this case until after November 30th, when I worked my way through everything, there was no disclosure that that Cedarvale transaction in an orderly winddown situation would require a monumental change in the capital requirements of the mining company in an orderly winddown. That's not set forth anywhere, Your Honor. And before I read anything last night, I was prepared to argue that. It just wasn't so clear to me based on the testimony that I read from trial and the declarations when everybody knew about that because it was approved so close but before the end of the confirmation hearing.

My point, Your Honor --

THE COURT: Another five minutes.

MS. BONSALL: I'm sorry. Okay. Let me zip through. Okay. Okay.

The NewCo plan actually provides for a toggle to an orderly winddown, replacing NewCo with the post-effective date debtors and the plan administrator. And whatever discretion they had is with respect to the mechanics and procedures and the plan administrator agreement. There is nothing that authorizes what they want to do here. And it's not implicit in anything. It's not implicit in anything that they can actually cite to.

Nobody deals with -- and Your Honor didn't seem to

think it was important as I did. The disclosures in the disclosure statement that say an orderly winddown doesn't provide for the same opportunity to enjoy the upside of the equity and the development of a regulatory-compliant operating business.

THE COURT: They believe that the staking business was a potentially quite profitable business, and not being able to include it means that you can't enjoy the potential upside that came from the staking business. Is that true?

MS. BONSALL: I don't know what they believe. What I know is what they disclosed.

THE COURT: Well, you know that they had intended to include a staking business.

MS. BONSALL: Your Honor, there are many things that I infer. And I'm sure that you're right. But the declaration that we submitted, this is a guy who read everything, an Earn creditor and a Borrower creditor. This is a guy who said to us, wait a minute, this was not supposed to happen, this is different from everything I read. This is a guy who came to us and said this isn't what's in the disclosure statement. He came to us and said that, Your Honor. And everybody ignores it like it doesn't matter.

He looked at the disclosure statement. He actually read it, right? And he read the plan. And he said

--

THE COURT: Do you have any other points you want to make?

MS. BONSALL: Okay, sorry. Let me just -- yes, Your Honor.

The Debtors are promoting this as not being adverse to creditors because even though the original orderly winddown with the numbers in it would provide a higher distribution of liquid cryptocurrency, they say it doesn't matter because a dollar of crypto now is the same as a dollar invested in NewCo. And I think that concept is naïve and inaccurate. An investment in NewCo is an investment in a new company and it is very different than -- it's not a public company now, Your Honor. We actually don't know whether it ever will be.

THE COURT: We don't. You're right. They've said that. They've made that point clear.

MS. BONSALL: They did not make that point clear.

THE COURT: Oh really?

MS. BONSALL: I do not think that that's clear in the disclosure statement, Your Honor. There is nothing in the disclosure statement going to --

THE COURT: There isn't a disclosure that it's dependent on the SEC?

MS. BONSALL: MiningCo?

THE COURT: Absolutely. It's a public company?

MS. BONSALL: No, no, I'm sorry. What I meant was there is no discussion of the risks of taking crypto, your crypto, and investing it in a mining company that is not public and that may never be public. There's nothing in there on that, Your Honor. I mean, now you're not shaking your head, but looking quizzically at me.

THE COURT: No. I'm accepting that point. Finish up. Finish up.

MS. BONSALL: That to me is like my bank saying, you know, one dollar of your deposit is --

THE COURT: Do you have any other points you want to make other than that? I'm glad that your bank would feel that way. Any other new points that you wish to make? Your time is about up.

MS. BONSALL: Do you mind I fi just check with Mr. Adler for a nanosecond, Your Honor?

THE COURT: Go ahead.

MS. BONSALL: Your Honor --

THE COURT: I'm just going to put on the record, unrelated to your argument, that because of interferences and inappropriate things on Zoom, we're only going to be -- if anybody else is seeking to be admitted, only attorneys will be admitted. No other parties will be admitted. I just want to put that on the record.

Go ahead.

MS. BONSALL: I was reminded, Your Honor, that the creditors of the estate overwhelmingly voted in favor of crypto distributions over anything else. I understand the argument to that will be the toggle provided for 100 percent ownership in the mining company, which is true. I flag 100 percent once again. But also, that was on a $50 million capitalization, not a $225 million capitalization.

I would also refer Your Honor to Page 265 of the disclosure statement. And, Your Honor, you're obviously technologically savvy. If you do a word search on the disclosure statement, you will see what I'm saying. Do a word search on winddown and see what happens.

So the actual section in the disclosure statement that says the debtors may toggle to a winddown describes the company as basically a company that does not have any upside for creditors. And I think that my point on that, Your Honor -- I would quote it to you but I would have to go look it up and I know I am closing in on my time. But look at it, Your Honor. It says toggle to winddown. It's Page 265. This is again what the Committee and the Debtors put forth to the creditors and it does not suggest --

THE COURT: You've made this point already, a long time ago. Thank you very much for your comments. Anybody else wish to be heard?

MS. BONSALL: I'm glad you heard it, Your Honor.

THE COURT: Ms. Cornell?

MS. CORNELL: Good morning again, Your Honor.

THE COURT: Good morning.

MS. CORNELL: Shara Cornell on behalf of the Office of the United States Trustee. I will do my best to be brief. I think that the points have been made.

The Debtors and the Committee have not met the burden to establish that these substantial plan modifications should replace the terms contained in the confirmed plan.

It appears that the parties knew that the transaction under the plan --

THE COURT: Slow down a little bit. Slow down a little bit.

MS. CORNELL: I'm sorry. Sorry. I'm trying to be cognizant of the time.

THE COURT: I know. I know. But I'm listening carefully, okay? But a little slower.

MS. CORNELL: It appears that the parties knew the transactions under the plan were stale at the time of confirmation yet made no effort to correct the record. Instead, they allowed the creditors to vote on the plan as is.

But the changes in funding under the new

transaction is in fact intimately connected to what creditors will receive under the plan. $170 million worth of crypto is a lot of money.

The Debtors will argue that the creditors aren't receiving less because they will be receiving stock in the mining company. Receiving stock in a potentially public company is not the same as the debtors have claimed. That stock currently has an unknown value. We don't even know if the company will go public. And there's even an out in the new transaction to get out of going public. What will happen in May of 2024, we don't know.

Upon information and belief, we don't believe that the Debtors have even submitted the paperwork regarding a new MiningCo transaction to the SEC as of today's date. The timing of the distribution also changes the value received by creditors. Crypto or money now is not the same as stock and equity later.

The Debtor should be required to provide the Court more information regarding proposed modifications including the funding requirements. The Debtors and the Committee have tried to distract from these changes by repeatedly comparing the new U.S. bitcoin mining transaction with the Fahrenheit transaction. But it's misleading because we should be comparing it to the backup transaction with Brick which was approved and paid for by the Debtor's estates. A

$1.5 million commitment fee was paid over the summer.

And I believe Your Honor asked earlier where in the disclosure statement or plan it was identified that there would be a $50 million contribution to MiningCo. And I can direct Your Honor to Disclosure Statement, page 28 of 830 that specifically states that there would be a $50 million contribution under the BRIC. There is no asterisk there saying that this could be increased, will be increased, or that the Debtors are aware that this is going to be increased.

It's only been a month since confirmation occurred and these problematic changes have nothing to do with the SEC. It has everything to do with the value of the Debtor's assets and the funds needed to go forward. These are not crypto issues. These are the issues in every single bankruptcy case. Why the changes now and not a month ago? Accordingly, the movants must provide an evidentiary basis for these proposed changes and an explanation for why we're hearing them now and they have not. Unless Your Honor has any other questions for me, that's all I have today.

THE COURT: Thank you.

MS. CORNELL: Thank you.

THE COURT: Mr. Sabin, I see you wanting to jump out of your seat.

MR. SABIN: Your Honor, I will be brief. Jeff

Sabin from Venable on behalf of Ignat Tuganof, class representative, party to the PSA, who filed pleadings yesterday at Docket Number 4136 and 4137. And I know this Court reads pleading, so I'm not going to --

THE COURT: I actually read Mr. Tuganof's filing.

MR. SABIN: I want to answer first your question. Okay? And I want not just supplement the answer that Mr. Koenig, but I want to give you some details on it.

So let's go to the Joint Amended Plan, Page 47 and 48. This is Article IV(e) and I believe you'll make reference to and find there a reference to a market test as part of an orderly winddown, which is on Page 48 of the Joint Amended Plan. And it is under that heading, if you will, if you look at Page 48, a backup plan sponsor and a backup plan sponsor transaction, contemplating a market test, which is discussed not just in the motion, discussed in the supplement file, which we joined, it's also discussed by Mr. Puntus. It's also discussed by Mr. Campagna. And, as I understand it, since it's not an evidentiary hearing and you are taking the declarations as uncontested, it alone is the real answer because that market test resulted in a number of things that are relevant to a conclusion that our clients believe, that I think the Debtors, believe that I think the Committee, believes that the Ad Hoc Earn Creditors believe, that creditors here, including Mr. Adler's client,

are getting more, whether you compare it to an apple or to an orange. And they're getting more not just because it's not 50 million contributed, it's 225. They're getting more because on the flip side of this, the fees that were to be market tested, which are in the record as part of the backup plan sponsored term sheet, are greatly reduced. And those fees include fees that were not even disclosed because what was disclosed was the identity of a possible mine manager, okay, but not necessarily the fees that would go with that mine manager in the disclosure document. Plus incentive fees for managing the liquid assets, incentive fees for managing litigation. And when you read the uncontested documents today, you will see there's a significant savings to these estates by what is being proposed as the implementation of the orderly winddown, which contemplated the market test that revealed not only all of those things, but it also revealed and it took cognizance of things that changed since the disclosure statement.

The Cedarville motion was not even around when the disclosure statement was approved. The Cedarville motion wasn't yet approved when the deadline to vote otherwise occurred, but it was on file. Mr. Adler's clients got notice of it. The US Trustee got notice of it. My recollection is neither of them objected in any fashion for the relief requested to that favorable settlement to

creditors and to these estates.

That settlement otherwise resulted in two things for today. The purchase by a Debtor of the Cedarville facility and an interim services agreement which is going to help build that thing. A market test otherwise resulted in a change from 50 to 225. No ifs, ands, or buts. Reduced fees. No ifs, ands, or buts. And it contemplated, okay, a different value which is also now part of the record. When you look at the disclosure statement, orderly winddown of MiningCo was $424 million. The value after a market test, whether you include the 12.7 million of new money from US bitcoin or whether you do it before is far in excess of the 424. It's high, I believe -- I'll defer to a presentation I'm sure that Mr. Colodny will make -- as high as $740 million, far more then what was contemplated.

Moreover, I now take issue, looking at Page 48, and I'm looking at the table again, Article 10, conditions to effective date. And I want to take issue with what you heard from the counsel to the Ad Hoc Borrowers and from Ms. Cornell. And I want to focus on the conditions to the effective date that change under an orderly winddown, a very important point. Those conditions that changed, which were fully disclosed and were included in the modified plan filed on September 27th which you otherwise as part of Paragraph 21 of your findings of fact, approved as complying with

Section 1127, those conditions removed SEC approval in connection with the winddown plan for purposes of issuance of the stock to creditors under Section 1145, fully disclosed in the disclosure statement, which will, because of the number of predators who are receiving MiningCo stock, make MiningCo a public company.

So it is not necessary for the SEC to bless, okay, the registration station, regardless of whether the Form 10 has not been filed. This company will go public assuming that, assuming that this Court approves today, what I think it can approve. Assuming it does, then this plan can be substantially consummated, not just by the distribution of higher amounts of liquid crypto, but by the distribution of MiningCo stock, which will make this company public.

I think there is a misreading of a section of a US MiningCo term sheet in agreement regarding what happens or what could happen to that public company on May 1. My reading of that agreement consistent with the term sheet, all public now is part of this motion, and as part of the supplemental plan supplement, is that the NewCo, the MiningCo, excuse me, the MiningCo Board has the right to decide whether to terminate if there has not been by May 1, 2024, SEC approval of the contemplated registration statement. That doesn't mean that creditors who receive MiningCo stock can't trade it. The law I believe is that if

you're an underwriter because of the amount of claims you may own in this case, you may have certain limits on your trade ability, but it is highly unlikely that there aren't more than one or two or a handful of creditors who might fit the definition of an underwriter and more likely that creditors who will receive MiningCo stock if they want, can privately sell it. Okay?

So from my perspective, Your Honor, this is about implementation, as Mr. Koenig argued to you, not plan modification. It is about adversity so that even if alternatively, you conclude that this is a modification under 1127, whether there needs to be additional disclosure and/or separately additional voting. I believe neither. I believe this Court --

THE COURT: Even if it's a modification, that doesn't necessarily mean that additional disclosure and voting is required?

MR. SABIN: Correct. And I believe this Court so held and so cited other cases back in 2011 in the In Re Boylen case, which, as I understand, it has not changed in this district or others that I know of.

So for all of those reasons, Your Honor, and independent of the reasons in our joinder relate to the following and last point I want to make, which is the Ad Hoc

Committee participate and their declarant participated in three days of mediation before Judge Watts. Those three days of mediation yielded a centerpiece of this plan and it yielded benefits to the retail borrowers themselves that are in our pleading. And it did so in a fashion that not contemplated, the word was "required" under the plan term sheets which is appended to our filing. It required those borrower group who signed that term sheet after three days of borrowing to sign a PSA, the PSA in this case. At the 11th hour, they said we're not doing that.

And so my last point is independent of adversity or not, they're getting all the benefits and none of the burdens. We don't think that's fair. For all those reasons, Your Honor --

THE COURT: Thank you, Mr. Sabin. Thank you. Mr. Colodny. I think you got the SEC all up in arms, Mr. Sabin, but go ahead, Mr. Colodny.

MR. COLODNY: Eric Colodny, White and Case on behalf of the Official Committee of Unsecured Creditors. I'm going to be brief, Your Honor. The disclosure statements in the clearest place I found, it said as explained throughout this disclosure statement --

THE COURT: Can you just give me the citation for the page you're reading?

MR. COLODNY: It's at Page 111. As explained

throughout this disclosure statement, the orderly winddown is a standalone reorganization of the Debtor's mining business and an orderly liquidation of the Debtor's other assets. Couldn't be clearer.

The chart that's included in the plan and the definition of backup MiningCo stock explicitly states that there is not a mining manager that has been selected under the backup transaction that's described in the plan. As Mr. Koenig said, that's left for the winddown motion. But what it does state in the chart under US Bitcoin agreements, concept eliminated unless US Bitcoin is selected as the mining manager in connection with the orderly winddown. It also says that the winddown motion will disclose the identity of the mining manager. That's exactly what we did here. When we got the SEC's determination, we ran a short process in which we spoke with US Bitcoin, who, to be honest, we didn't know would be interested anymore. They were part of the Fahrenheit deal. One of the reasons that this flexibility was built into the plan is we had no idea at the time what could occur. It was left for the winddown motion, for the implementation of the winddown.

As part of that, we also went to the BRIC and Galaxy also submitted an additional bid as has been put in the record already. We ran a process to get the best transaction. And I heard the borrower group argue many

times that this is not what they thought would occur. Not once did they say, this is not a good deal, this is not within the Debtor's or the Committee's business judgment, and this is not -- or did they refute any of the statements that were made in any of those declarations with respect to the transactions before.

The other thing I take a lot of issue with is that we're comparing this to NewCo. We're not. If you look at Mr. Campagna's declaration -- and I think this chart is the most helpful thing here -- at Docket Number 4051. And it's Exhibit A. It shows a comparison of the orderly winddown in the plan versus the MiningCo transaction. And as Mr. Koenig walked through, it shows 531 pricing to make it apples to apples. And in that instance, it shows that everyone is receiving, all people that are entitled to receive claim distribution for unsecured creditors, which as you found, borrowers are unsecured creditors to the extent of the set off so they sit pairing with respect to earned creditors in that respect, everyone's receiving 7.5 percent more MiningCo common stock recovery because of the market test that was run and the US Bitcoin being selected. And they're receiving, I believe it's 1.7 percent less initial cryptocurrency. That's as of May 31st.

He also includes 11/17 pricing. And if you look at that, there's almost $300 million more liquid

cryptocurrency that's being distributed to people. That results in an approximate 75.7 percent total recovery. That's far in excess of what we predicted people would receive under the orderly winddown. People are receiving more recoveries in every single form of currency that we provided under the plan.

And to be clear, we said in an orderly winddown, it will receive liquid cryptocurrency, backup mining company stock, which Your Honor pointed out was always intended to be a public company, a reorganized public company. So, liquid recovery rights, which are going to be the proceeds generated by a BRIC through the monetization of the illiquid assets and litigation proceeds. That's exactly what people are receiving.

Now, Mr. Cornell cited one of the Johns Manville cases which I believe they were changing the terms of the trust, and they looked at the previous case that Mr. Koenig cited. The Second Circuit there said first, I looked at the plan to see if the modification language is in the plan. It's not. And they pointed out three other different trust agreements where they said, look at this, it says you can modify. Look at this one, it says you can modify. This one is different. You can't impute modification because people specifically stated it here. We do this in contract all the time.

In the first Johns Manville case, they said we look to the plan and the plan says you can modify this. So we find that even though this is a change, it was specifically contemplated in the plan and the bankruptcy court did not care in entering an order approving that. That's exactly what we did here. This is entirely contemplated in section I believe it's 4(e). It states about the orderly winddown. Now there are things that were left open and we filed a motion to give specific disclosure of those things. The process that was wrong, we filed the declaration of Ken Ehrler. The terms of the new US Bitcoin Agreement, all disclosed. It was sent to 600,000 creditors. Mr. Koenig mentions the 11,000 page disclosure, their affidavit --

THE COURT: Certificate of service.

MR. COLODNY: Certificate of service. Three objections: one from the borrower group, one from the US Trustee and one from Ms. Lau. We also have spent a ton of time with Ms. Cornell walking her through the terms of the plan attempting to explain to her. Those terms aren't mentioned anywhere in her objection. Instead, she simply points at the fees owed BRIC and says, why did you pay for those? We paid for them to be ready. When we went to move to them, we found a better transaction. We then reached an agreement with the BRIC.

THE COURT: My recollection, I made it wrong. She opposed the BRIC plan, the BRIC backup for Fahrenheit bid.

MR. COLODNY: Correct.

THE COURT: And I want to go back to the transcript, but I vaguely remember that particularly in light of what happened in other cases, I didn't want to find this -- I thought it was perfectly reasonable exercise of business judgment for the Debtor to decide that it wanted to have alternative backups if Fahrenheit deal didn't work. And consequently, I approved the fees.

MR. COLODNY: Correct. And when the Fahrenheit deal did not, the BRIC was there. They were the backup. We found a better deal. And ultimately, we were able to come to an agreement with the BRIC, an agreement which produces a better result for creditors. It fits entirely within the budget that we disclosed. And the BRIC is now incentivized to go out and to recover more value for creditors. We decided that litigating was not the best answer. We got together, we struck a deal that is an improvement for everybody. That's exactly the market test that was defined. Everything that we've done fits squarely within the four corners of the plan, was disclosed to everybody, and produces the absolute best result for creditors, which is getting out now.

THE COURT: Thank you.

MR. COLODNY: Thank you. All right. Ms. Scheuer, I saw you in the back getting excited. But let me ask -- go ahead. Who else wishes to be heard? We are probably, well, who else is going to want to be heard? Tell me who you are. No, you're not going to be heard again?

MS. KUHNS: Earn Ad Hoc Creditors.

THE COURT: Go ahead, Ms. Scheuer.

MS. SCHEUER: Good morning, Your Honor. For the record, Therese Scheuer for the US Securities and Exchange Commission. With me in the courtroom is William Uptegrove, also from the US Securities and Exchange Commission.

Your Honor, the SEC filed a reservation of rights but does not object to the MiningCo motion. Your Honor, there has been a lot of discussion about the role of the SEC in relation to the plan. And if the Court will permit, I'd like to briefly address that issue.

THE COURT: Go ahead.

MS. SCHEUER: Thank you, Your Honor. Your Honor, the Debtors have said in their bankruptcy papers that they sought preclearance from the staff with respect to the Form 10 that they had hoped to file. Preclearance, Your Honor, is an informal process in which registrants can seek guidance from the staff. Generally speaking, practitioners can reach out to the staff before filing a registration statement to seek interpretive guidance. Guidance, Your

Honor, that's all. Registrants or issuers are not required to go through the preclearance process. And given the context here, it's an important point. NewCo was not required by any SEC rule to get preclearance prior to filing the Form 10. With respect to the Form 10 itself, Your Honor, registrants generally file a Form 10 when they seek to have a class of securities listed on an exchange or when they wish to register a class of securities and become a reporting company under the Exchange Act. Companies can also be required to register if certain thresholds of assets and holders of record are exceeded.

As Your Honor has stated earlier in the hearing, Form 10 requires audited financial statements and that's for all predecessor entities, Your Honor. In this case, that would have meant that as part of the Fahrenheit deal, all of the entities contributing assets to NewCo would have had to file audited financial statements.

The Debtors have stated in the bankruptcy case that the issue they were seeking preclearance on was whether they could get, in their words, a waiver of the normal requirements to file historical financial statements as part of the Form 10. The Debtors stated that they only had audited financials for the mining business, not the other entities contributing crypto and other assets to the NewCo under the Fahrenheit deal. And the Debtors wanted guidance

from the staff that under this particular set of facts, they could submit financials for the mining business only which is something less than is normally required under the securities laws. At confirmation, Your Honor asked the SEC to respond to the Debtor's request as expeditiously as possible. The staff in the division of corporation finance worked diligently to respond.

The Debtors had provided some certain information as late as October 25th, Your Honor. The Debtors have stated that on November 9th, Corpfin staff told them that Corpfin staff would not require the Debtors to provide all of the financials of the predecessor entities as long as they had audited financial statements for all the assets to be contributed to NewCo. But the Debtors state that that proposal wouldn't work and the deal effectively ended because the Debtors are not able to produce audited financial statements relating to any assets other than the mining business due to the condition of the Debtor's historical financial records.

Your Honor, so what the Debtors wanted the SEC to Bless was public trading in a company whose publicly available information was not just incomplete but wholly missing in material part from the information to be provided to investors. And this was because the financials for certain businesses were unreliable and un-auditable.

The point of the SEC's disclosure regime is to provide investors with accurate information about what they're investing in. We understand that the Debtors and others had hoped to proceed with the Fahrenheit deal despite the absence of the information that would normally be required, but the Debtors disclosure statement contained numerous disclosures explaining that they might have to pivot away from the Fahrenheit transaction. They understood that the deal might not work for a number of reasons. That was the reason for the toggle in the deal. The Debtor's implementation of the toggle has been something less than seamless is not an issue that was caused by the staff.

Your Honor, I'd just like to briefly address the possible Form 10 filing anticipated in the MiningCo motion. We understand that parties and creditors and perhaps the Court would like some indication from the SEC about the likelihood of success of the MiningCo registration process, but we cannot do that without even seeing the Form 10 that they proposed to file.

THE COURT: I haven't asked for it, just to be clear.

MS. SCHEUER: And to my knowledge, no Form 10 has of the date been filed for MiningCo. When a Form 10 has been filed with all the accompanying information, it will go through the usual process. The review staff may comment on

the Form 10. Comments sometimes result in revisions or even withdrawal of the Form 10. We cannot speculate on the outcome of that review.

If the parties want to structure a transaction that involves a public company, there is a process for doing so and the parameters are well known and well established. Thank you, Your Honor.

THE COURT: Thank you very much. All right. I'm sure I'm going to make all of you unhappy. We're taking a break until 2:15. We'll resume the further arguments. Let me, let me see. Who is it? Who wishes to argue at 2:15? You're not arguing again.

MS. KUHNS: You asked, Your Honor.

THE COURT: Well, I'll see you all at 2:15. I wish -- I had hoped we would be able to continue and finish, but we can't. We're in recess until 2:15.

(Recess)

THE COURT: All right. Thank you. Please all be seated. All right, we're back on the record in Celsius 22-10964. Before we begin, I just want to make a brief statement that, you know, after all of the hybrid or Zoom hearings we've had, today actually was the first time we've had any disruptions. There are at least three or four court staff were monitoring the hearings. During the lunch break, my courtroom deputy had communications from creditors who

were cut out or were cut off from the hearing. I feel strongly that public access to these hearings is very important. We're permitting anybody who wishes to rejoin to do so. In the event of any disruptions, and without going into detail, I believe that the disruptors have been identified. And I just want to say that every possible remedy: civil, criminal, or otherwise that can occur as a result of any disruptions to the court hearing will take place.

I think it was a question do we keep everybody shut out of the hearing or do we try once again to make this as transparent as possible? And that's what we've decided to do to make this as transparent as possible. It really doesn't apply to you all in the courtroom. But I do think it's, you know, I've tried throughout and we've had -- I'm told there were close to 200 people on Zoom this morning. And that's our goal. We have restrictions. I said earlier at the start of the hearing because anything that's an evidentiary hearing, because of judicial conference regulations, there are limits on what we could do that we used to do before during the pandemic. But I hope to make this as transparent as possible. So with that, let's go back on the record and I apologize. I didn't hear your name clearly. I know you wanted to speak. You indicated that several times.

MS. KUHNS: Joyce Kuhns, Offit Kurman, for the Earn Ad Hoc Group.

THE COURT: Come on up.

MS. KUHNS: Thank you, Your Honor.

THE COURT: Just let me find a place in my pad, okay? Okay. Yeah, please go ahead.

MS. KUHNS: Thank you Your Honor, Joyce Kuhns, Offit Kurman, for the Earn Ad Hoc Group. The Earn Ad Hoc has been consistent in its position in favor of a quick exit with the best possible recoveries achievable and the most liquid crypto possible in creditor pockets while minimizing execution risk. We believe the MiningCo transaction is consistent with the best interests of creditors and recognize their intense desire to get out of Chapter 11 and cut off the $20 million a month administrative burn. Your Honor, as counsel, we have spoken to the creditors on a regular basis, the Earn creditors. Quite frankly, the creditors are exhausted and they're frustrating. I think they think they may be living in Groundhog Day. And they sincerely believed at the conclusion of the confirmation hearing that the end was in sight.

Now subsequent events have altered that perception and landscape admittedly. First, with the SEC clarifying its position on NewCo after entry of the confirmation order, which necessitated the pivot to the orderly winddown. The

Debtors and the Committee correctly gauged there was absolutely no creditor appetite or tolerance for an elongated reauction process and instead, instituted the rebidding procedures resulting in the selection of US Bitcoin as the mining manager and the filing of a joint motion.

The Earn Ad Hoc feels the joint motion contains essential clarifications to the confirmed plan, which have been mentioned previously: the identification of a mining manager, the winddown procedures and the winddown budget, the market testing that was called for and now the famous chart that everybody's been referencing at 4(e) of the plan, and that certain elements were always contemplated to be flushed out in the event of a toggle. And we believe that this transaction fits squarely within the four corners of the plan the creditors voted for overwhelmingly.

We believe a re-solicitation is unwarranted and will only result in unnecessary delay, considerable expense, and if we consider the average burn, monthly burn this case, we're estimating maybe between 60 and $80 million, and will expose creditors to the downside risk of the recent rapid appreciation in Bitcoin pricing, which was discussed more fully in Mr. Dixon's letter to you. Your Honor. And I believe his counsel would like to address after me.

Given the fast moving crypto marketplace, if this

plan did not --

THE COURT: People would like to have it in their hands to do it.

MS. KUHNS: Absolutely, to do what they want with it, to do what they want with it. Well, it is the Debtor and the Committee's burden to satisfy you that these are clarifications only, which we believe they are, and if modifications, they do not materially and adversely affect creditors, which we maintain they do not. We believe they have met their burden today.

I would also point out that the Earn Ad Hoc Group consists of Earn creditors as well as those who have borrowed accounts. Earn has only asked for what it is entitled to. It came to grips with the bankruptcy reality of the dollarization of its crypto claims. The Earn claimants knew when they voted that in a toggle, all elections would be canceled and all unsecured creditors would be on a level playing field in receiving their distributions of liquid crypto, stock, illiquid assets, and litigation recoveries.

By contrast, the Ad Hoc Borrowers refuse to accept the reality and want to revert to an orderly winddown scenario with elections never available under that quarterly winddown, and a scenario that is no longer feasible. Since due to the passage of time, we have had the Core Scientific

settlement with the acquisition of Cedarville site to which the Ad Hoc Borrower group did not object. We have the StakeHound settlement.

THE COURT: Everybody was excited about that settlement.

MS. KUHNS: It seemed like it, Your Honor. Let's put it this way. We didn't object, obviously. And the pay down of coin-base agreements, all of which necessitated a realignment of the winddown budget and reallocation of duties and fees among the winddown administrators and managers.

As you will hear, the rise in liquid crypto prices and the downward adjustment and the orderly winddown administrative costs have actually result in higher initial liquid crypto distributions than under the original plan and the original winddown, not lower. I would also point out that US Bitcoin is initially investing $17 million based on a $700 million valuation. So clearly, it's a believer as well.

THE COURT: You know I sort of have the feeling that -- this may be a bad analogy -- but, you know, the chairs on the Titanic have been moved around, but it's the same players. I mean, US Bitcoin has been on the scene throughout. I mean I don't see any surprises.

MS. KUHNS: That's why we felt the rebidding

procedure that was followed here makes sense, really, because the parties had already been identified. I'm really concerned that if this motion is not approved, we're going to be back in the dance again and with the delay and the expense of what that entails.

And so as you consider the motion, Your Honor, please be mindful that not all creditors are whales who can wait out another month-long process.

THE COURT: You know I guess Mr. Adler chose not to return with his partner because I was going to ask, did they take a vote on their Ad Hoc Committee? We heard the one big player with a loud voice.

MS. KUHNS: I don't know, Your Honor. From what I'm hearing, I just don't think this is the consensus.

THE COURT: This hearing -- I don't mean to interrupt you but -- he's supposed to be here. This hearing didn't end. This hearing continued. He and his partner chose not to be here this morning -- not to be here this afternoon. And I'll have to consider whether that merits striking the whole argument. But, you know, go ahead, I'm sorry.

MS. KUHNS: No, go ahead. I'm sorry.

THE COURT: I certainly wanted to know from them. I don't know, I haven't looked to see how many people are members of the Ad Hoc Borrowers Committee. Did they take a

formal vote?

MS. KUHNS: I don't know if it's been increased. I think when we were in mediation, it was around 15. We have around 21 based on our 2019 filing. We have people who are active and didn't want to be part of the 2019 just because they didn't want to be part of a larger --

THE COURT: He and his partner wanted to get up and speak again. Go ahead. I'm sorry.

MS. KUHNS: Well, Your Honor, your point is well taken. Because it that I don't think that the position of the one whale reflects the creditor body based on the lack of objections, the lack of objections to Core Scientific. I mean we have a series of things that have been put forward. We have a very active creditor base and I'm sure some of them will want to be heard after the lawyers. But I don't think that's the consensus view. The consensus view really is that, you know, we have the whales, but we also have some who lost their life savings. And they've been hanging in here for 18 months through inflationary market. And quite frankly, we believe they need and they deserve their distributions now. So thank you, Your Honor. I don't want to take up any more of your time.

THE COURT: I'm sorry to delay you this morning.

MS. KUHNS: Understood. I think Mr. Manderson is available on Zoom. I'm not sure if you were aware of that.

He represents BNK to the Future and Mr. Dixon. I think he might want to be heard.

THE COURT: Okay.

MS. KUHNS: Thank you, Your Honor.

THE COURT: Thank you.

MR. STONE: Your Honor, this is actually Chase Stone. I'm with Chris Manderson. We are from Ervin Cohen Jessup. We represent Mr. Dixon and BNK to the Future. Mr. Dixon is present on Zoom, obviously represented by counsel.

THE COURT: Just hold on a second. We're trying to see if we can make this louder. Are you able to get closer to your microphone?

MR. STONE: Sure, is that any better?

THE COURT: Say your name again? Chase Stone?

MR. STONE: Chase Stone, correct.

THE COURT: I'm sorry. Go ahead, Mr. Stone.

MR. STONE: So as I --

THE COURT: And I did have a written communication from Mr. Dixon that I did see.

MR. STONE: Correct. Okay. That's the substance of what Mr. Dixon would like to be heard on if Your Honor would allow him to briefly present some of the information that I think might be helpful to speak to the creditor's perspective.

THE COURT: That's fine.

MR. STONE: Okay. Mr. Dixon can appear now. Thank you.

THE COURT: Thank you, Mr. Stone. Mr. Dixon.

MR. DIXON: Thank you. Can you hear me okay, Your Honor?

THE COURT: Yes, I can.

MR. DIXON: Okay. It doesn't allow may camera to come on. It's doesn't allow on Facebook my camera to come on. It doesn't allow that.

THE COURT: If you would, get as close to your microphone as you can. I want to be sure that we hear you clearly. Okay?

MR. DIXON: Okay. I think you can see me now.

THE COURT: Yeah, you got a big setup there.

MR. DIXON: Okay, yeah. Thank you. Your Honor, as somebody that did sign the planned support agreement, I take somewhat of an offense that I'm not able to object. I think the debtor, Celsius, and the UCC will testify to the fact that I gave them a very hard time throughout this whole process and pushed back until I was willing to sign a planned support agreement because I thought there was no better. There are many things that I'd like to see better in this plan, but I do believe in the current situation that this is the best plan. And in the letter I wrote to you, I gave three reasons from my professional opinion on why I

think that is that I'd love to share very briefly.

Firstly, is that delay could lead to a significant loss for creditors. We calculated that after the price of $54,000 per bitcoin, which is just around the corner, we don't know what the price would do, then it is possible that the next subordinated class could opportunistically try and take some of the gain from creditors. Even though we're only getting back 25 percent of our crypto, we could be made 100 percent whole just based upon an early decision. Now, one of the very first calls that I had with the Debtor in the UCC was to try and ensure that we don't sell our cryptos. That's allowed us to gain approximately $2 billion in value just as a result of the crypto not being sold, unlike FTX and BlockFi.

And the second reason I gave is that currently there is no viable alternative. BRIC has now joined with MiningCo. From my understanding, they were more interested in managing the illiquid assets and US Bitcoin Group was more interested in managing the mining. It seems we now have the best of both worlds now they have come together and there is no other alternative. So resoliciting --

THE COURT: Yeah, I just, you know earlier in this case, I was monitoring almost on a daily basis what the price of bitcoin is. I stopped that, but I'm looking now at the screen. It says 43,492,60. I will say, Mr. Dixon, when

I saw the valuation reports that were done and they estimated, I can't remember now a year or a year and a half from now they're projecting $50,000 on bitcoin. I was quite skeptical. Bitcoin was probably 25 or $30,000 at that point, but now it's like almost $45,000. And so I just make those comments. I mean, I just, I'm not the expert. I didn't do the valuation report. I saw that. I questioned in my own mind, ultimately was convinced, persuaded by it, to use that $50,000 -- I can't remember exactly what date that was projected as -- but suddenly that's looking pretty real. Go ahead, Mr. Dixon.

MR. DIXON: Yeah, Your Honor, I've been involved in bitcoin for 13 years and I never bet against bitcoin. And we are at that stage in the cycle where bitcoin has historically gone up in value.

So the third reason is the cost of re-solicitation, I think needs to be factored into the equation when calculating how much we might actually get. So we have repeatedly said that there's approximately $20 million cost of being in bankruptcy. I estimate, based upon what we've seen, when people might come along and try and opportunistically take some of our crypto value, that we might end up in another six months process, six times 20 million is 120 million.

So rather than the 175 million more crypto, which

is being calculated on the lone Ad Hoc's objection, it's actually, once you factored in the price and the cost saving of the fact that we're not using BRIC anymore, that's about 103 million cost savings that brings the 175 million down to approximately 72 million.

Now, if we ended up in bankruptcy for another six months, then we'd actually end up with $48 million less crypto as a result of going through the re-solicitation, which would be, I believe, the identical plan that we have in front of us right now. So that's the third reason.

The fourth reason is that the assets are identical under this plan. They're just distributed in a very slightly different way. Rather than the 175 million being a crypto distribution, which I've already pointed out would soon lead to $48 million less crypto with six months delay, it's put into equity into the company. And by having it as equity into the company, we get to use some of the mining assets that are, that are sunk costs. Now many, some people, some creditors, and I presented this, I have 13,000 creditors that joined a mailing list and I give webinars regularly. I presented these numbers to all those creditors. There's 1300 people that are in this that joined to listen to this presentation that I gave on these numbers. And of those that attended, there was nobody that disagreed that this is the right way to put forward. I can't testify

to that, but that's what we saw.

So the fifth reason is that the mining company, even if people are skeptical about the upside of the mining company, there are many mining companies that would love to be public. The SEC has given their comments today. And if another company and the board decided that a company for Galaxy, for example, wanted to be public, they --

THE COURT: Excuse me. Mr. Shah -- Mr. Adler.

MR. ADLER: I apologize --

THE COURT: The hearing started at 2:15.

MR. ADLER: I apologize.

THE COURT: Go ahead, Mr. Dixon. I'm sorry to interrupt you.

MR. DIXON: No worries. I'm almost done. So the fifth point is that there is 292 million based upon the numbers in the plan of additional value if we can merge the mining company, even if we don't have a terribly efficient mining company at the moment. So that's additional value.

The final reason that I think we should do that is my experience from the past. I've been involved in most of the major bitcoin bankruptcies. Now none of those were from the US. So this is my first Chapter 11 and my first one was Mount Gox in 2014, which filed for bankruptcy in Japan. Now when it filed for bankruptcy, 90 percent of the bitcoin was lost, but the price appreciation of bitcoin meant that

creditors were made whole in that case. As soon as creditors were made whole in US dollar value, all of the different opportunistic parties came along to try and get their piece as the next subordinated class. This led to years and years and years of delay. I hope the same doesn't happen in the first case where this may happen in the US.

Another bankruptcy I was involved in was Bitfinex. Now they distributed the crypto even though the haircut was locked in in dollars before they exited. And this meant that all of the gains went to the creditors and it was the most successful recovery for a bitcoin company in history.

And so from those two different experiences, if we can get out of Chapter 11 before we are made 100 percent whole, I believe we can prevent all of those opportunistics really taking advantage of the fact that that crypto does belong to creditors. And then if you factor in the delay cost, you end up with $48 million less crypto anyway. So based upon all of these things, this is the first case that I'm aware of, of bitcoin going through what happened in Japan and British Virgin Islands, in the US. And so I'd rather -- and I'm sure I hope that you would rather, Your Honor -- not have to rule on what happens when bitcoin makes you 100 percent whole. And therefore we end up with less and less bitcoin, the higher the price goes up. I put it to everybody. It is 100 percent in creditors best interest to

exit without a re-solicitation because it could just lead to a worst result for the exact same result Thank you very much.

THE COURT: Thank you very much, Mr. Dixon. Let's just hold on for a moment here. Mr. Adler, come up to the microphone. When was the last 2019 statement you filed?

MR. ADLER: I believe December or in February.

THE COURT: There was one filed in January '23.

MR. ADLER: That's the one.

THE COURT: That's the last one?

MR. ADLER: I believe so.

THE COURT: How many members of your Ad Hoc Committee.

MR. ADLER: Approximately 70 I believe.

THE COURT: And was there a vote on the Ad Hoc Committee whether or not to file objections?

MR. ADLER: The steering Committee decided to file objections.

THE COURT: How many on the steering Committee?

MR. ADLER: Five.

THE COURT: And did you take a vote of the entire Ad Hoc Committee in deciding to file an objection?

MR. ADLER: Yes, Your Honor.

THE COURT: And what are the results of that vote?

MR. ADLER: They were in favor.

THE COURT: What was the results of the vote, the numbers? How many voted, how many voted to object?

MR. ADLER: Everyone voted to object. Everyone voted in favor of it.

THE COURT: How many?

MR. ADLER: All five members of the steering Committee.

THE COURT: I didn't ask about the steering Committee. I asked about the full Ad Hoc Committee. I'm asking did the whole Ad Hoc Committee vote whether to file objections?

MR. ADLER: No.

THE COURT: And did you communicate to the full Ad Hoc Committee that the steering Committee decided to file an objection?

MR. ADLER: Yes.

THE COURT: And when did you do that?

MR. ADLER: It was done before the objection was filed.

THE COURT: Did you get any responses?

MR. ADLER: I got responses, yes.

THE COURT: Is there any reason that you and your partner chose not to return to court at 2:15 when the hearing was started?

MR. ADLER: Your Honor, there was a mix up between

Ms. Bonsall. I was on a conference call. Ms. Bonsall was involved in something else and we just both lost track of it. We do apologize.

THE COURT: All right. Anybody else wish to be heard? Mr. Koenig.

MR. KOENIG: Thank you, Your Honor.

THE COURT: Let's see if there's more people on. Anybody else on Zoom wish to be heard?

CLERK: Judge, Mr. Amerson has a hand up and Cathy Lau.

THE COURT: Okay. Just so everybody is clear. Because of the set up in the courtroom, I don't see the hands raised. So you'll have to point them out to me. Call them out, Deanna, in the order in which they're raised if you can. Thank you very much. All right, go ahead.

CLERK: Yeah. Jason Amerson.

MR. AMERSON: Thank you. Jason Amerson, pro se creditor. I'd turn my video on but I think it's still disabled so it's up to the Court.

THE COURT: I would prefer if you turn your video on.

MR. AMERSON: Yeah, I tried. So it is coming in super overexposed at the moment, Judge?

THE COURT: Go ahead, Mr. Amerson.

MR. AMERSON: Your Honor, I recognize that the

Court may appreciate the comments from Simon Dixon. I'd like to make it clear that he is creditor. Not a consultant, nor is he is a bankruptcy expert. I don't know if he --

THE COURT: Can you either -- I don't know where your microphone is, but you cut in a little in and out. You're going to have to move a little closer to your microphone, even if it has you leaning forward. Okay?

MR. AMERSON: Certainly, I can do that.

THE COURT: Okay. Thank you.

MR. AMERSON: I'll just start from the top. So I recognize that the Court may appreciate the comments and the opinions of Mr. Simon Dixon. I'd like for it to be known that he is a creditor and not a consultant with respect to the bankruptcy. He's not been hired by the Debtor nor the UCC to provide advice or counsel on behalf of Debtors. So in spite of whatever experience he had with bitcoin bankruptcy, his opinion is really just that of one creditor. So no question really. Just a comment.

THE COURT: Okay. Anything else you want to add?

MR. AMERSON: Not at this time. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Amerson. Anybody else on Zoom wish to be heard?

CLERK: Yes. We have Cathy Lau next.

THE COURT: Okay. And Ms. Lau and Ms. Lau did file an objection.

MS. LAU: I would like to read my objection if that's possible. I submitted some exhibits, if those could be pulled up.

THE COURT: No, just -- you filed your objection and it's on the docket. And people have access to that. If you want to add any comments, please go ahead and do so.

MS. LAU: Okay, because my exhibits are completely different from what was there. I will just read what I had.

THE COURT: Don't read your objection. It's --

MS. LAU: No. I'm not reading my objection. This is completely different.

THE COURT: Go ahead.

MS. LAU: So I am here to object to going forward with this plan because it has no way of succeeding in a way that is in creditors' interests the way it currently stands and also has no path to success if the same people responsible for putting this together, like this current plan, are tasked with making a new plan for creditors to vote on it. Because everyone involved in the creation of the reorganization plan has turned this bankruptcy into a situation to enrich themselves and structured the plan in a way that they have the powers to administer the plan, pursue litigation and direct NewCo amongst themselves to ensure

that each will command a big enough slice of the pie that will allow them to continue to profit from this case, even after we exit this bankruptcy, all while confidently continuing to claim that each self-serving appointment has been made in the creditors' interests knowing that with every one of them in on this arrangement, they can count on each other to validate and vouch each placement and cite the credentials that come with their overpaid positions of power to invalidate any protests coming from pro se creditors against their self-dealing. As one creditor on Twitter said, I've had to say it over and over again since the early days of Chapter 11, the term fiduciary duty has been selectively interpreted during this ordeal. Not sure why creditors even use this term when we know that this specific aspect has been disregarded as it relates to creditors' interests. I want to play a clip of a video to demonstrate what appears to be happening. You're about to hear an ex-lawyer describe what he learned while studying law in California. And what he describes, I feel, captures what is going on.

THE COURT: Ms. Lau, Ms. Lau --

MS. LAU: Yes.

THE COURT: If you have comments that you wish to make in support of your objection, that's what this is about.

MS. LAU: That is what I'm presenting.

THE COURT: Well, that wasn't, okay. So I'm going to give you a chance but you need to direct your comments to the issues that are pending before the Court today, not your long standing grievances, which I've been hearing for some time.

MR. KWASTENIET: Your Honor, we would also object that she appears to just be reraising the same arguments that she raised at the confirmation hearing.

THE COURT: Go ahead, Ms. Lau.

MS. LAU: I think that this is really difficult because I prepared something to read and you don't want me to read it. So I think I'm going to have to think about it because I really worked hard on what I had and it's not even what I started during the confirmation hearing. I never even got to read everything I had in the confirmation hearing because I got cut off. So I don't exactly know what you wanted me to do. But everything that I submitted, like my amendments to like my exhibits and stuff, none of it was what I submitted as an objection. Everything that I'm saying now is not what I included in my objection. I wrote something that was completely different and I'm not given the chance to read it. So I don't know what to say.

THE COURT: I'm going to give you a chance to read what you have. What you've said so far is not pertinent to

the issues that are before the Court today. But I'm going to give you five minutes to read a statement or portions of your statement. Please go ahead. I won't interrupt you but keep your comments brief. Go ahead.

MS. LAU: I don't think I have time. I have to -- can I please have time to think about this? Because I don't have -- this was going to be longer than five minutes. So I am going to have to think about what I'm going to say.

THE COURT: No. I'm telling you right now. I'm giving you five minutes because you're comments so far have not been pertinent to the issues that the Court is faced with now. If you wish to ahead, I'll give you five minutes. I will not interrupt you, but that's the time limit.

MS. LAU: Well, I guess I'll just move to the end of my comments, which was to share with you how creditors have been feeling about this situation. I had shared creditors, but if you can see what creditors have been saying about this case, it was like imagine trying to go through another auction and having to tell the judge, we can't possibly have seen this coming after telling the judge we want to pay a backup bidder millions because we saw this coming, then deciding not to use the backup bid specifically designed for this very moment. First order of business, the litigation judge should be clawing back the professional fees and misaligned incentives where the board stands to

make millions if they can avoid over like orderly winddown. Celsius UCC fails its shared responsibility to put all creditors first. The bankruptcy process is disgusting. He nailed it. This is the third opportunity they've had to go with a winddown and they choose not to do it even though it is clearly in the best and safest approach. Just pathetic at this point. All of these quotes basically are like creditors who are saying that like the lawyers should be round out, like should be like clawed back on because as it says, somebody said, judge should ask lawyers for a refund and UCC for some compensation back. If it is really about the creditors. We voted for the shit deal or the orderly winddown. Not a high bid, cascading pack of ideas and plans. Liquidate us and give us our crypto. Some clawbacks that matter are against the professionals that robbed us along the way. How can they charge advisory and expert professional fees when they fucked up at literally every opportunity. Is there zero accountability? It's complete madness. What are we paying BRIC for? I look forward to whatever crazy excuse they have at the next hearing on the 30th. And like I already said, I said it over and over again since the early days of Chapter 11, the term "fiduciary duty" has been selectively interpreted during this ordeal. Not sure why creditors even use this term. And we know that it is a specific aspect that has been

disregarded as it relates to creditors' interests. The bankruptcy proceedings have not been fair because those in charge who have pretended to represent us, have only represented themselves and claw the fees and expenses back before going into either a plan restructure or orderly winddown is imperative to ensure that creditors are not roped into feeling they have to vote yes to a plan granted to them to prevent the remainder of their funds from being taken from further prolonging of this bankruptcy, which is what will happen if creditor funds are not returned to them so that we can start to feel comfortable with voting for a real plan. And in the case of the orderly winddown, clawbacks are necessary so that creditors are not forced to receive scraps of what they could have and should have gotten had all the self-dealing parties not stolen so much from our estate and left us with so much less than we would have if they hadn't gotten involved in the first place. This case can still be turned around to help the real parties. It was meant to help the creditors if the creditors are finally given a chance to be put first. Please recognize that this proposed time for what it is. It's a cash cow for plan creators serving their interests rather than creditors and please have creditors either have a fair chance at a second go of reorganizing the company or give us our paper as was promised including that which was

allegedly legally stolen from us. I spent hours compiling a chart that included like plan creators and their roles and their conflicts of interests and all these connections. I'm not being permitted to present it so clearly. Everything that I present now just sounds crazy to you because you can't see the connection. Every single person on the NewCo board and on the litigation Committee and all the administrative positions, all these positions have all been filled by people involved in creating the plan. Like every single opportunity that has been taken to like take advantage of the creditor situation has been taken, but nobody's going to see that because nobody wants to see the paper that I made. I think that's really unfair because I don't know what's going on with this court. Everyone knows that everybody involved in creating this plan has just been introducing all these -- it feels like this mining plan is just a distraction because what you really should be looking at is the composition of the board and the people involved in leading this plan because every single one of them has appointed somebody representing them and all of them are getting like future positions and future roles and future payment from this plan being put forth. I think that's the real reason why they're so focused on putting this mining plan forward. They don't care if it's a mining plan or any kind of plan as long as like the board that they chose and

every single position that they filled still stays the same. You could see that in the plan that I uploaded and within the (indiscernible) that I uploaded because I spent a lot of time playing together and showing you what their conflicts of interest are and what the conflicts are. I wanted to prevent it, but I'm not allowed to. So that's really difficult for me to do. I feel like this just demonstrates how creditors really -- it's like for us to --

THE COURT: Ms. Lau, Ms. Lau, you used your five minutes.

MS. LAU: Yes. Thank you.

THE COURT: Everything that you filed is on the public docket for anyone who wishes to read it.

MS. LAU: Okay.

THE COURT: Anybody else on Zoom wish to be heard?

CLERK: Yes. We have Lucas Holcomb.

THE COURT: Okay, go ahead.

CLERK: Lucas, can you unmute?

MR. HOLCOMB: There we go. Can you hear me now?

THE COURT: Yes, I can. Go ahead.

MR. HOLCOMB: Okay, thank you, Your Honor. Lucas Holcomb, pro se creditor, although I feel with the emotions that were just expressed, I do agree with Simon Dixon that getting out of bankruptcy is in the best interest of the creditors. I think we're all kind of tired of the

situation. And, you know, continuing to pay lawyer fees -- no offense to lawyers -- is just eating away at the estate. As an aside, Your Honor, I did file a letter to the Court on November 10th, Docket Number 395, regarding multiple ballots and how they're handled. And I'm still waiting for a response for that. If that's something that could be addressed at some point, I would appreciate it.

THE COURT: All right. Anything else you want to add, Mr. Holcomb?

MR. HOLCOMB: That is it, Your Honor. Thank you. I'm sorry I didn't get to court sooner. I had pneumonia and the flu at the same time. So I tried to make the end of November and early December court appearances to speak about that letter, but my sicknesses prevented me.

THE COURT: All right. Thank you, Mr. Holcomb.

MR. HOLCOMB: Thank you.

THE COURT: Deanna, does anybody else wish to be heard?

CLERK: Yes, Immanuel Herman.

THE COURT: Go ahead, Mr. Herman.

MR. HERMAN: Hello, Your Honor, Immanuel Herman, pro se creditor. Unfortunately, I'm going to have to remain off camera and I'll be fairly brief. First I just wanted to join in what Simon Dixon and the Earn Ad Hoc said. Second, I take issue with implications like Mr. Dixon does that I

can't speak out if, you know, because of signing a plan support agreement. Like others who signed the planned support agreement, a lot of us gave the Debtors and the UCC a hard time about it before we signed and we signed when we were confident that the plan was as good as it was going to get. I will also say that I believe that the current plan is consistent with what's already been voted on and that we should avoid re-solicitation, which for the reasons that Mr. Nixon outlined, will cost the estate, you know, potentially tens to hundreds of millions of dollars.

One issue that I have raised for many months with the Debtors directly and others is the concern about what happens if crypto would go up to the point where it makes creditors more than whole or 105 percent hole. And I completely believe that if that happens, lots of creditors will come out of the woodwork, subordinated creditors, and it's going to become a total mess. And we shouldn't let the perfect be the enemy of the good. The most important thing right now is to exit, to get people their crypto back. And, you know, in a bull market, even if it's not frankly the perfect mining company or anything else, there's a decent chance that people who have that stock could do just fine. Even if the stock ends up not doing fine people, you know, it doesn't make sense to reverse course now and push for just a liquidation. It would take too long. We've come too

far. And we need to finish the job, get out of Chapter 11. And that is pretty much what I have to say, Your Honor.

THE COURT: Thank you very much, Mr. Herman. Deanna, anybody else?

CLERK: Yes. Kulpreet Khanuja.

THE COURT: Thank you.

MR. KHANUJA: Can you hear me, Your Honor?

THE COURT: Yes, I can.

MR. KHANUJA: I'm sorry I'm slightly under the weather. So, thanks so much for your time, Your Honor. I'm part of the Earn Ad Hoc as well, so I totally support the proposal and everything that has been mentioned from Ms. Kuhns and Ad Hoc. Now, exactly one year ago, some of the pro se motions, including my own, were around the ownership of the assets. They were the denied. Now, while denying those motions, the Honorable Judge acknowledged that some of the arguments were unique to our situation, while some of the other arguments were common to many, if not thousands of creditors. So basically for the common good, the decision was taken. And since then, we formed the another Ad Hoc and we worked with (indiscernible) the people and for the creditors. Now it's before the judge with all of the same items and (indiscernible). As part of our Ad Hoc, we have spoken to many creditors who are facing unimaginable hardship. We think the current plan and the current

proposal that is in front of them will make the exit possible and help them financially. That's all.

THE COURT: Thank you very much. All right. Anybody else, Deanna?

CLERK: Daniel Frishberg.

THE COURT: Okay. Mr. Frishberg.

MR. FRISHBERG: Hi. Daniel Friberg, pro se. I'm going to be as brief as I can. Everyone else has basically said that I was going to say so I'll say one thing. There's a very loud vocal minority of creditors who oppose the plan such as the borrowers, but it should not supersede basically the entire rest of the creditor body who just want to get out of bankruptcy to prevent the burn. The opportunity cost for creditors is massive and the entire thing could unravel, the entire plan in general could unravel if people are made dollar whole. Also some pro se customers, including myself, filed a joiner on the docket. I'm not sure if you're able to see it because we only filed this morning. Approve the MiningCo transaction and end the bankruptcy. Thank you. Have a good day, Your Honor.

THE COURT: Thank you, Mr. Frishberg. Anybody else, Deanna?

CLERK: Jason Amerson had his hand up.

THE COURT: Okay. Go ahead.

MR. AMERSON: I'm sorry, Judge, I'm only --

THE COURT: You already spoke already.

MR. AMERSON: I know. I was informed that my audio was coming through almost unintelligibly. So I just want to make sure people understood what I said.

THE COURT: I was able to hear and understand you, Mr. Amerson.

MR. AMERSON: Okay. Thank you, Judge.

THE COURT: Okay. Thank you. Deanna, anybody else?

CLERK: Those are the only hands I see.

THE COURT: All right. Mr. Koenig.

MR. KOENIG: Good afternoon, Your Honor. For the record, Chris Koenig, Kirkland and Ellis for Celsius. So just to bring it back, I think it's important to know the options that are in front of the company right now, the options that we have. The choice is not between $50 million orderly winddown or $225 million orderly winddown. The choice is between emerging from bankruptcy in January because the motion has been granted --

THE COURT: A little slower please.

MR. KOENIG: -- with an approved orderly winddown motion or we will have to re-solicit the plan at 225 million or some higher number. There is no other alternative. And Mr. Puntus' declaration walks through the capitalization amount in great detail. He explains that after we receive

the feedback from the SEC and the Debtors and the Committee determined to toggle the orderly winddown, we talked to several bidders about being the mining manager. And in Paragraph 12 of Mr. Puntus' declaration, he explains that all bidders proposed a capitalization amount for MiningCo that was consistent or higher than $225 million. He says that $50 million is "entirely inadequate" for the new company and he explains exactly why that capitalization amount is needed including for the build out of the Cedarville site.

So again, it is not like we can just red pencil the plan.

THE COURT: The build out of the Cedarville site is a result of the settlement that I previously approved where the Debtor acquired the Cedarville site.

MR. KOENIG: Correct, Your Honor.

THE COURT: And anybody who objected to it had an opportunity to object at that time.

MR. KOENIG: Yes. And I would note that as part of that motion, we, of course, described this is a piece of land that needs to be built out. There are construction costs. We even filed a construction contemporaneously with the motion. So for the borrowers to now suggest that this is a surprise they learned during last night's deposition is astonishing to me because it was disclosed with Core

Scientific in the first place. And also Mr. Ken Ehrler's declaration described the Cedarville capitalization amount when we filed the winddown motion. So suggest this is some sort of 11th hour surprise is astonishing. But just to bring it back. The borrowers are complaining about two main things, the capitalization amount, they want $175 million more in liquid crypto. But that option is simply not on the table today. The only options are to emerge now at 225 million or to re-solicit a plan at 225 million because we're not going to send this mining company out into the wilderness without the appropriate tools that it needs to survive as a going concern.

The borrower, if we have to re-solicit, as multiple people have pointed out, that will cost the estates and the borrowers and all the other creditors significantly more money because of the cost of these Chapter 11 cases. The borrowers are effectively taking this position for hold up value and the Debtors simply aren't going to pay it.

So let me turn to the borrower's argument in a little bit more detail. I'm going to take this in the order I did before, first, it's implementation, not modification. And then even if it is modification, re-solicitation is not required. Ms. Bonsall raised two main issues, you know, why this is a modification of the plan and not merely implementation. First, the 50 million versus the 225

million and then the fact that there's equity compensation being paid under the MiningCo transaction.

So I addressed the 50 versus 225 in my earlier statement, but just to bring it back because it's so important. The definition of the winddown budget in the plan includes disbursements that are necessary for the winddown. Why would the disbursements necessary to capitalize the new company not be a disbursement that is necessary for the winddown? The new company could not emerge and could not operate without cash and that cash could only come from one place, the estate. So, of course, it was contemplated within the plain language of the documents. I can see that Your Honor maybe is not --

THE COURT: No, no. It's so -- is the $50 million figure in the original disclosure statement for the plan that was voted on?

MR. KOENIG: It is in the disclosure statement.

THE COURT: Described as what?

MR. KOENIG: It is described as the capitalization of the mining company that is being illustratively described in the disclosure statement. Now, what I would say is the plan allows us to revise the terms on the same or better terms. And the language is very clear about, you know, we can do a market check, we can evaluate and propose a plan that is as good or better for creditors.

THE COURT: Where is the language in the disclosure statement or the plan that supports what you just said that that was an option or possibility that was described to creditors when they voted on the plan?

MR. KOENIG: So what I would -- I'll start with that same table that we've looked at a couple of times.

THE COURT: Just give me the pages when you get to it.

MR. KOENIG: Sure. Okay. So it starts on Page 47. I'm using the numbers on the bottom, Your Honor.

THE COURT: Okay.

MR. KOENIG: The Page 47 of the plan has --

THE COURT: Changes of the plan.

MR. KOENIG: Right. The table that we've all talked about, right? So the winddown procedures -- this is now on Page 48. It starts on 47 and goes over to 48. You know the Debtor shall file the winddown procedures -- words, words, words -- to implement an orderly winddown in connection with the winddown motion. Such procedures shall provide additional details regarding the winddown assets, the winddown budget, the identity of the mining manager and any revisions to the winddown procedures and shall be subject to approval by the bankruptcy court in connection with the winddown motion. It goes on to say in that table that there will be a market check of the terms of orderly

winddown and that those terms can be filled in on terms that are at least as good as what was set forth in the disclosure statement.

And as Mr. Campagna explained in his declaration, those terms are significantly better. The economic terms are significantly better, hundreds of millions of dollars of more value for the creditors. And so we're taking the flexibility in the plan and running with it.

THE COURT: Let me ask hypothetically. One of the major complaints seems to be that the disclosure statement, the plan originally contemplated $50 million capitalization and that number has now moved to 225. What if it moved from 50 to 500? Would that then be a modification that would require re-solicitation and a vote?

MR. KOENIG: I don't believe so, Your Honor. What I would say is that the plan allows us to implement something that is on the same or better terms. We would have to make that showing that it's on the same or better terms.

THE COURT: Actually, let me stop you there because -- and please correct me if I'm wrong. It seems to me that I have two decisions that I have to make. One, does -- we'll use your terms -- does the motion constitute a modification or an implementation?

MR. KOENIG: That's right, Your Honor.

THE COURT: If it's implementation, there may be some baggage with that term, and otherwise it reflects good business judgment and I can approve it. Okay. The other choice, if I conclude it's a modification, what's the language of the test? I have to decide whether it has a material adverse effect on creditor recoveries?

MR. KOENIG: That's right, Your Honor.

THE COURT: Okay. So here, you know, if the capitalization goes from 50 million to 60 million, but the result is superior recoveries by creditors, supports implementation -- would support -- it's a modification but there's no material adverse effect on creditor recoveries.

MR. KOENIG: Yeah, so you're saying that it's a modification that should be approved without re-solicitation.

THE COURT: Yeah, without re-solicitation. So, here, you're going from 50 to 225. That's only half the equation. I also have to look at what's the effect and conclude, do I have before me evidence to establish that putting 225 in capitalization versus the 50 million that originally was suggested, leaving room for adjustment of the budget or whatever, the debtor and Committee have established that the proposed betterment of the terms are sufficiently likely that yes, this is -- it's a modification, but it doesn't have an adverse effect on

creditor recoveries; therefore, no solicitation is required.

MR. KOENIG: I think that if you believe that this is -- that this is a modification of a plan and --

THE COURT: I haven't -- let me make clear, I haven't decided that yet. But I'm just -- I'm going through the decision tree.

MR. KOENIG: Right.

THE COURT: Okay. If I -- if I say no, it's not a modification --

MR. KOENIG: We have to demonstrate good business judgment. We couldn't just say all of the --

THE COURT: What do you have to show if it is -- if I conclude it is a modification? In order for me not to order new disclosure statement, new solicitation.

MR. KOENIG: I think I have to demonstrate that the modification, if it is a modification, does not have a material adverse effect on creditors, and I think we've done that through the Campagna declaration and the charts that he's explained that it's hundreds of millions of dollars better for creditors, and I think Mr. Puntus's testimony supports that as well when he talks about the fact that a dollar of liquid crypto distributed in peoples' pockets is economically equivalent to -- I may have broken your microphone. Can you still hear me?

THE COURT: Yeah, (indiscernible)

MR. KOENIG: That a dollar of liquid crypto is equivalent to a dollar of increased equity that the creditors owe. You said the Titanic. I try not to describe clients as the Titanic. I think about it more like ingredients in a salad, Your Honor. There's a little bit less tomatoes. There's a little bit more carrots. But it's all going to creditors. The creditors are getting the whole salad. They get to eat the whole salad. Maybe there's a little bit -- you know, the ingredients have moved around a little bit, but this is all the same parties. This is all the same -- this is all the same currency that we've been talking about the whole time. You know, we -- as I mentioned before, the early winddowns can include four types of distributions. This is including those same four types of distributions. It's a little bit more carrots; it's a little bit less tomatoes. Maybe I said it (indiscernible)

THE COURT: So, what -- what's the standards that I have to apply in determining -- okay. The 50 to 225, no one's arguing that's what it is -- 50 to 225.

MR. KOENIG: Right.

THE COURT: Okay. What level of confidence -- what burden do you have in establishing that the result is better for the creditors?

MR. KOENIG: I think it's a -- I think that we are --

THE COURT: Or not worse for the creditors. Not materially worse for the creditors.

MR. KOENIG: This is in the modification world.

THE COURT: Yes, in the modification world.

MR. KOENIG: I think we have to demonstrate that it's more likely than not that the recoveries are better for creditors because that's the typical standard --

THE COURT: Where do you derive the more-likely-than-not standard? That's what I'm struggling with.

MR. KOENIG: Yeah.

THE COURT: Because, look -- and I really genuinely haven't decided this. I'm --

MR. KOENIG: Right.

THE COURT: You know, I'm -- look. You can't sit in this chair and you're all on the side; you've done all this work, okay? I approve everything. You know, I have hearings on approving fee statements. So, Mr. Dixon is probably right. What's going to happen -- this doesn't get approved. That does not -- it isn't going to get approved just because I think, "Oh, God. I've got to put a stop to this tomorrow."

MR. KOENIG: You have to interpret the law.

THE COURT: Yeah, I have to interpret the law, and that's what I'm asking about. So -- or I could decide it in the alternative. I'm not saying I am. I could decide it in

the alternative; it's an implementation, not a modification. And if it's a modification, it doesn't have a material adverse effect on creditor recoveries. In fact, it appears to me that the debtor has demonstrated that creditor recoveries are going to be superior. They can be a lot worse if we have to go through -- if this were done, a new disclosure statement, new voting, exactly the same thing I have before me today, the burn rate just continues for months while this goes on. But that's not -- I can't decide it just on that basis.

MR. KOENIG: So, as to your question about the (indiscernible) the first is the debtors have the -- the movant has the burden --

THE COURT: Then you would --

MR. KOENIG: -- in an awful lot of things in bankruptcy, and the standard is "more likely than not", unless the code or the rules or some sort of case law indicates that we have a higher standard. The other thing I would say is I don't think it really matters what the standard is because we submitted evidence and the evidence is on the contrary. Mr. Campagna provided, you know, testimony in his declaration about what the recoveries would be. Nobody else has challenged those assumptions.

THE COURT: The only thing they said is 225 rather than 50.

MR. KOENIG: They would prefer more liquid cryptocurrency is what they're saying, but they're not saying that recoveries are actually lower as a result. They just -- they would prefer more carrots and less tomatoes, but that's not the standard. The standard is, what is the effect on the creditors' recovery? What is the economic effect? And we've explained that the mining company is worth hundreds of millions of dollars.

THE COURT: It seems to me it can't be -- the standard can't be that raising capitalization from 50 to 225 torpedoes the plan no matter what. Even if they show the pot of gold at the end of the rainbow, more likely than not, they seem to be telling me, "50 to 225 -- that's not the plan that was voted on. You've got to order (indiscernible) new disclosure statement, re-solicitation."

MR. KOENIG: So, let's say a couple things. Let's say the plan doesn't say 50 million in it anywhere. There's Exhibit C in the disclosure statement. I've got the disclosure statement. Exhibit C in the disclosure statement, Page 1 -- it's Page 345 of 830 on the top. That's where you locate Exhibit C.

THE COURT: Okay.

MR. KOENIG: So, there's a footnote and it says something similar to what the plan says, which is if the debtors decide to pivot to the orderly winddown, they may do

so on terms set forth in the backstop plan sponsor agreement -- that's the agreement with the brick -- or on terms that provide a better recovery --

THE COURT: Better recovery.

MR. KOENIG: -- to the debtor's creditors than the backstop plan sponsor. Those words matter, Your Honor. That set forth a standard that it has to be better for creditors' recoveries, and that's exactly what we've done (indiscernible)

THE COURT: Where's that language on "provides a better recovery"?

MR. KOENIG: It's Page --

THE COURT: 345 of 830?

MR. KOENIG: Correct, it's in Footnote 1 on that page, Your Honor. And what I would also point out to folks that want more liquid crypto is by moving from the Newco to the orderly winddown, the illiquid assets -- it would have gone to the Newco and been monetized by Fahrenheit. When they were monetized, that would be capital of Newco instead of, you know, "Maybe the new board will decide to make a dividend to shareholders; maybe not." Who knows? That's the new board's fiduciary duty. By moving to the orderly winddown, there are litigation administrators that are being appointed to monetize those assets, and once monetized they will immediately be available for distribution to creditors.

So, for folks that want more liquid cryptocurrency, they're going to get it. (indiscernible)

THE COURT: So, you're saying that I should look at Footnote 1, Exhibit C, Page 345 of 830 that includes this language of the plan that provides for better recovery for creditors.

MR. KOENIG: Correct, Your Honor, in addition to the provisions of the plan that I said earlier. I think that that's the really constructive footnote. Okay. So, let me turn back -- let me turn back to my argument. So, we've covered the 50 versus 225. The other argument that Ms. Bonsall raised was the equity compensation and whether it was 100 percent or 100 percent subject to dilution. And so, frankly, I think she's just misreading the documents, and it is complicated and there's a lot to sort through and there's a lot of -- there's a lot of definitions. So, I'm looking again at the table in 4E in the plan. It is true that that table sets the defined term "Management Compensation" and "Plan Sponsor Contribution" are deleted, but if you go and you look at the defined terms in the plan, those are the exact economic terms that were agreed to with Fahrenheit. It doesn't mean that there's zero compensation for the mining manager.

If you look at the definition of "management compensation" it includes three components: a management

fee, a mining manager fee -- both those are cash; they were $20 million a year or $15 million a year -- as well as the equity awards that was part of the Fahrenheit agreement. So, three different components. They were getting $35 million combined in cash and some equity. If you were to remove that definition, not just the words on the page but the entire concept, we couldn't pay the mining manager anything, cash or equity. It's not just the equity. You couldn't pay them anything. That can't possibly be the import of documents. We describe how you're going to have to pay the mining manager a fee, and of course, nobody's going to do work for free in this country.

What I would say for the equity point -- equity is always subject to dilution, and in fact, or plan recognizes that here. The plan provides -- let me make sure I have the right definition. In the definition of "unsecured claim distribution consideration", that describes the recoveries to unsecured creditors, distributions to unsecured creditors. It says: "Creditors will receive 100 percent of the Newco common stock, subject to dilution by equity incentives claims." So, the Newco plan undisputedly included equity, right? And the plan described it as 100 percent equity to creditors --

THE COURT: Subject.

MR. KOENIG: Subject to dilution. And every

Chapter 11 plan I've ever been involved with had a -- that there was a reorganization, not a liquidation -- included equity incentives for management, and that's because that's what every public company in America does; that's what every large private company in America does. You want to do that to align the interests of the management company and the shareholders. So, of course any business is going to have equity compensation. The removal of those defined terms, which again were economic terms agreed to with Fahrenheit -- that just means that the economic terms are out. It doesn't mean that no other similar economic terms could ever be added. That would mean that we couldn't pay our mining manager cash or equity. That can't possibly be what was meant. All it did was kill the defined term in the plan documents.

Let's see. Oh, and what I would say to that -- when I mentioned the defined term for Newco common stock in Section 4E, that provides that the defined term for the Newco common stock is replaced by "backup MiningCo common stock". So, if you trace through the definitions, it says: "100 percent of backup MiningCo common stock, subject to dilution". That's really important, Your Honor.

So, I'll turn next to the modification part of the argument. I didn't hear Ms. Bonsall actually even argue that the purported modification was material and adverse to

creditors. I didn't hear her argue that. She said --

THE COURT: She did. (indiscernible) 50 to 225.

MR. KOENIG: But she didn't explain how that was worse for creditors. She said, "Oh, there's less liquid crypto," but it's not like we're lighting $175 million on fire. We are moving from the creditors' left pocket to the creditors' right pocket. We're, you know, changing the ingredients on a salad. We're rearranging the (indiscernible) chairs, if Your Honor prefers. But it all belongs to creditors, and as I said earlier, Mr. Puntus testified that a dollar in the left pocket is the same as a dollar in the right pocket. In fact, he thinks that that's a conservative approach and that a dollar of equity could be worth an awful lot more. He points to Marathon, which in the last year -- one of the largest and most successful mining companies in the country -- their stock price went up 400 percent and Bitcoin price went up 150 percent. What he testified to was that the price of the stock in the mining companies tends to outstrip the price of the commodity, because as the commodity goes up, people are very interested in those that generate the commodity.

So, I said it -- I said it before and I'll say it again, just because it's such a key point. The recoveries of creditors are much higher, even holding cryptocurrency prices constant at both --

THE COURT: (indiscernible)

MR. KOENIG: -- apples to apples and oranges to oranges, and the oranges are even -- if you don't control for cryptocurrency prices, the recoveries are much, much, much higher. The value of the mining business has almost doubled from what's in the disclosure statement, from 424 million in the orderly winddown to $740 million, and that's the price at which US Bitcoin is invested. They're putting their money where their mouth is. It isn't just me or even Mr. Campagna saying, "Oh, yeah, Judge. You know, the value of the mining business has gone up." Somebody who is putting their new money on the table is agreeing that that is the price at which -- the value at which, I should say -- the mining business should be considered.

Ms. Bonsall also argued that we're saying that we can do anything we want in the budget; we can just move things around willy-nilly. Not sure -- we sort of talked about that. I have a business judgment standard. I have to articulate a good reason.

THE COURT: (indiscernible) -- what if instead of 50 million you were going to put 500 million?

MR. KOENIG: I think that that -- I think that the argument is easier given that it's lower than the 450 million the creditors voted on for Newco. I think that it can argue that capitalizing Newco up to 450, any number

below 450 is easier. I don't think 500 would be insurmountable. I think, you know, as the number gets higher, it's going to be an awful lot harder for us to demonstrate that the new company actually needs it, but the evidence we've submitted today suggests that it doesn't. So, I would say 500 is more difficult than 450 or 449, but I don't think it's a redline either way, but I do think it's easier given that creditors voted on 450 capitalization amount for Newco, which the main business line is mining, and the new board could have devoted 450 million to mining if they wanted to. That would have been their choice. So, any number below 450 is -- should be within the reasonable expectations of creditors, I would argue.

I just want to take a moment to correct a couple of points. Ms. Bonsall says that the fees are higher in the orderly winddown because the US Bitcoin fee went from 15 million to 20 million, but what she's missing is in the Newco transaction -- I mentioned this a few minutes ago -- it was 15 US Bitcoin, 20 to Fahrenheit, for a total of 35. What we did is we gave US Bitcoin a portion of that $20 million fee to compensate them for the fact that they are now running the business that Fahrenheit was supposed to be running. So, we gave them 5 of the 20; that is a $15 million cost savings. It's certainly not higher. I covered Cedarvale already and how we disclosed that -- Mr. Ehrler's

declaration in the Cedarvale settlement motion, the construction contract the day after we filed the motion. Ms. Bonsall made quite the to-do about her client reading everything in the disclosure statement, but frankly, I was astonished by the declaration she filed.

In Paragraph 2, it says, "I read everything; I read the disclosure statement. I didn't understand that there was a new business." Then two paragraphs later, it says, "Well, I understand the capitalization for that new business was $50 million." I don't understand how those two things can be consistent. There's plenty of places in the disclosure statement that of course talk about how MiningCo is going to be established under the orderly winddown. I won't bore Your Honor with all them, but just to point out the first one, Page 5 of the numbered pages on the bottom is the first place where this appears. It's the fifth page of the disclosure statement. It provides that the debtors can pivot to the orderly winddown, which is a standard -- a standalone reorganization of the debtor's mining business.

THE COURT: I -- one of the things that bothered me about the argument I heard this morning was it seemed to be saying winddown equals liquidation. It doesn't. The winddown plan here contemplated a new standalone business. The issue was what was -- what lines of business were going to go into it. They may have had very good reasons for

wanting to put staking with it. It isn't happening, but it was -- the business wasn't going to be liquidated in one, three, or five years. The expectation, the hope is that creditors will receive a tradeable security --

MR. KOENIG: Right.

THE COURT: Which they can keep or sell.

MR. KOENIG: Right. And what I would say, there was a provision of the disclosure statement that she referenced that talked about "You won't be able to realize the upsides of new regulatorily compliant businesses," plural. The plural is important. MiningCo is just mining. The reason why the disclosure statement read that way was Newco contemplated mining, staking, and other regulatorily compliant businesses that may occur into the future. That's why the disclosure read that way. It didn't say, "There will be no new business." It just said, "You won't be able to realize the upside from all these other interesting cryptocurrency businesses."

THE COURT: (indiscernible) sitting in the audience. I guess what I wondered about is, could -- assuming that MiningCo becomes registered, tradeable security, could it decide next year it's going to expand its lines of business to include staking and then acquire the assets of a private entity, or from the liquidation of the rest of Celsius wind up having a staking business that just

wasn't there when they started the business?

MR. KOENIG: I'm a bankruptcy lawyer, not a securities lawyer. I'm sorry, was that --

THE COURT: That's not really a question, but it did -- it's something that crossed my mind. I was just wondering about -- and let me make clear, never for a minute did I expect the SEC to modify its procedures for considering whether or not to give early clearance to Newco. I did not. The only thing I hoped was that the SEC would act expeditiously, okay? I'm not in the slightest questioning their decision that no, they couldn't do early clearance when there are no audited financials for this significant part of the business. So, I just --

MS. SCHEUER: (indiscernible)

THE COURT: So, I -- really, and I mean that sincerely. I have great respect for the SEC, and I just -- but I've just been wondering about when you see all the public companies that decide to do acquisitions, to do -- expand the lines of business. We'll see what happens five years from now, whether the statement looks good then or not and whether people reach into it or not.

MR. KOENIG: Right. Before I move on from Mr. Villinger I'll just say, sort of apropos with the questions you had for Mr. Adler earlier, when he first filed that declaration, I was frankly expecting to see an awful lot of

others from the other members of this group, and I was a little bit surprised that they was only -- that there was only one. Just a couple of quick comments and then I'll be done. Ms. Bonsall talked about how there were no disclosures about the risks of investing in a new Bitcoin mining business -- I used the break to skim through the disclosure statement. Starting --

THE COURT: You know, I looked at those risk disclosures pretty carefully. I think, in fact, I added one or two.

MR. KOENIG: I was going to say, the thing I remember was at the disclosure statement hearing Your Honor freehand drafted --

THE COURT: Yeah.

MR. KOENIG: -- one more that we put in there. So, I remembered that -- I remembered that they were there, but there's -- starting on Page 263 of the disclosure statements -- the disclosure statement. Five, six, seven, eight, nine, ten, eleven, twelve -- all mining related. There's a lot more to it, but I won't waste the Court's time. She also said that there's nothing about the risk of not obtaining regulatory approvals. I would point her and the Court to Page 258 of the disclosure statement.

THE COURT: That was frequently mentioned in court that you needed regulatory approval from the SEC and so that

risk was always prominent.

MR. KOENIG: Right. I just -- I was surprised that the argument was being made that they'd read everything, and then they talked about how all these different things aren't there and it's pretty plainly there in the documents. So, just to wrap up on the borrowers, it's pretty apparent what the borrowers are doing here. They had the ability in the Newco transaction to opt for more liquid crypto. That election is expressly written out of the orderly winddown in the plan, so they're upset about that. They would like to get more liquid crypto. But that doesn't allow them to hold up the plan for everybody else. That's just the way the documents read, the documents that they support and the documents that they did not object to at confirmation. They don't get to relitigate everything because given the way that things went they are disappointing. We're all a little bit disappointed about the way that things went with having to pivot to the orderly winddown, but we're here and we're trying to make the best of it. We want to get out of -- we want to get out of bankruptcy and make distributions, and as I said, the two options before the Court are, approve the motion and let us get out of bankruptcy, or of course if Your Honor determines a re-solicitation is necessary, we will do it, but we have to do it. There's no way to simply pivot to the $50 million

winddown. Unless you have anything else for me on the borrowers, just really briefly for the record, Ms. Lau's comments on --

THE COURT: Don't even bother.

MR. KOENIG: Okay. That's all I have. The debtors respectfully request (indiscernible)

THE COURT: Mr. Colodny?

MR. COLODNY: I don't have much more, Your Honor, but your question of (indiscernible) $500 million -- I'm not sure I agree with Mr. Koenig that $500 million would be acceptable and 450 was Newco, which was supposed to be a much bigger company. This was something --

THE COURT: I don't either.

MR. COLODNY: This was something that was discussed, negotiated, and I think Mr. Adler put it in one of his nine footnotes to his supplements. It said he agreed with me that the votes say something. We did not go into this thinking that there was unlimited amounts of cash to put into the Newco. We went in with the thought of, "What is the appropriate amount to make sure that the equity is not impaired and we're able to give the most amount of cryptocurrency back to creditors?" And I think that the business judgment in arriving at that is what Your Honor has to look at, and I think that here, you have a creditor-led fiduciary, debtors who are fiduciary to all constituents,

and an ad hoc group of a large amount of earned creditors, and you heard from Mr. Dixon (indiscernible) earned creditors we've spoken with a lot that all are saying 225 is the correct number.

We don't want to impair what is, you know, arguably the largest asset of this estate and going to be a large part of everyone's distribution at the risk of giving a little more crypto to everybody. You know, this is a balancing act. In bankruptcy, there's always business judgments that are executed. There are always people that don't agree with the business judgments but here we sought to test that extremely carefully. We approached it in a very measured manner with that in mind and arrived at 225 as the appropriate figure, trying to strike that appropriate balance.

THE COURT: Okay.

MR. COLODNY: Thank you.

THE COURT: All right.

MR. KOENIG: I'm sorry, Your Honor. We do have one more -- we have a sealing matter, so just (indiscernible)

THE COURT: Granted.

MR. KOENIG: Thank you.

THE COURT: And I just didn't say that; I did read the motion.

MR. KOENIG: Thank you, Your Honor. We'll submit the order.

THE COURT: Okay. I'm taking it under submission. I understand the importance of trying to resolve this quickly. I think one of my law clerks communicated my request for expedited transcript from today's hearing. I have to go back -- I've got a lot of reading to do. I did read a lot before taking the bench today. I want to go back and look at some of the specific things in the disclosure statement and I will try and reach a decision promptly, but we're also at a very busy end of the year period, busy -- not necessarily all with work in the court. All right. Thank you very much for everybody's participation. Karen, thank you very much, as always. We're adjourned.

(Whereupon these proceedings were concluded at 3:33 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 22, 2023